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Attorneys for Defendant

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PARAMOUNT PARKS, INC.,

Plaintiff,

Case No. 07 Civ. 10595 (SHS) (MJD)

-against-

LESTER NAIL,

Defendant.

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**DECLARATION OF A. MICHAEL WEBER**

A. Michael Weber, an attorney duly admitted to this court, hereby declares under penalty of perjury as follows:

1. I am a member of the firm Littler Mendelson, P.C., attorneys of record for the Defendant in this action. I make this declaration in opposition to Plaintiff's motion for a protective order and attorneys' fees, and in support of Defendant's cross-motion for sanctions and attorneys' fees.

2. Attached hereto as Exhibit 1 are true and correct copies of pages from the transcript of Craig Freedman's deposition, taken on April 23, 2008.

3. Attached hereto as Exhibit 2 is a true and correct copy of a document marked and identified as Exhibit C at the deposition of Craig Freeman taken on April 23, 2008.

4. Attached hereto as Exhibit 3 are true and correct copies of e-mails I sent to PPI's counsel on April 15 and 16, 2008, in which I sought assurance that PPI would not call Richard Kinzel to testify. PPI refused to provide such assurance.

5. Attached hereto as Exhibit 4 are true and correct copies of pages from the transcript of the court conference held on February 29, 2008.

6. Attached hereto as Exhibit 5 are true and correct copies of e-mails I received from PPI's counsel on February 19, March 10, and March 28, 2008, in which they represented that Mr. Kinzel had no personal knowledge regarding the subject matter of PPI's claims or Defendant's counterclaims.

7. Attached hereto as Exhibit 6 is the Affidavit of Richard Kinzel, sworn to March 6, 2008, which was provided to me by PPI's counsel on March 10, 2008.

8. Attached hereto as Exhibit 7 is an e-mail I sent to PPI's counsel on March 27, 2008, in which I stated that Defendant would defer determining whether to seek Mr. Kinzel's deposition until after a lower-level official, Mr. Freeman, had been deposed.

9. Attached hereto as Exhibit 8 is a letter I sent to PPI's counsel on April 24, 2008, in which I provided notice that Defendant would seek sanctions against PPI and Mr. Kinzel based on PPI's unreasonable refusal to produce Mr. Kinzel for deposition, as well as PPI's and Mr. Kinzel's false representations that Mr. Kinzel lacked relevant knowledge relating to this matter.

Dated: May 8, 2008

S/  
A. Michael Weber

**DECLARATION OF  
A. MICHAEL WEBER**

**EXHIBIT 1**

1

2 UNITED STATES DISTRICT COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 -----X

5 PARAMOUNT PARKS, INC.,

6 Plaintiff,

7 vs. No. 07 CV 10595(SS)

8 LESTER NAIL,

9 Defendant.

10 -----X

11 April 23, 2008  
12 9:02 a.m.

13

14

15

16 Deposition of CRAIG FREEMAN, held at  
17 the offices of Squire, Sanders & Dempsey  
18 L.L.P., 350 Park Avenue, New York, New York,  
19 pursuant to Notice and Agreement, before  
20 Thomas R. Nichols, a Registered Professional  
21 Reporter and a Notary Public of the State of  
22 New York.

23

24

25

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<p style="text-align: right;">Page 10</p> <p>1 C. Freeman</p> <p>2 know that I would designate any of those as</p> <p>3 specifically for the purpose of preparing for the</p> <p>4 deposition.</p> <p>5 Q. When did you have the one meeting to</p> <p>6 prepare?</p> <p>7 A. Last Friday, the 18th of April.</p> <p>8 Q. That was with Ms. Kirila?</p> <p>9 A. Yes.</p> <p>10 Q. Anyone else?</p> <p>11 A. Our general counsel was present for</p> <p>12 that meeting.</p> <p>13 Q. Who was that?</p> <p>14 A. His name is Duff Milkie.</p> <p>15 Q. M-i-l-k-i-e?</p> <p>16 A. M-i-l-k-i-e.</p> <p>17 Q. Anyone else?</p> <p>18 A. No.</p> <p>19 Q. How long did that meeting last?</p> <p>20 A. About two and a half hours.</p> <p>21 Q. Did you review any documents during</p> <p>22 that preparation meeting?</p> <p>23 A. Yes.</p> <p>24 Q. The things you've already discussed?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 12</p> <p>1 C. Freeman</p> <p>2 MS. KIRILA: I am just going to object</p> <p>3 and instruct you not to answer with respect</p> <p>4 to conversations on Friday with Sandy</p> <p>5 regarding any information that I requested</p> <p>6 you to obtain.</p> <p>7 Q. When you say Friday, was that the</p> <p>8 18th --</p> <p>9 A. Yes.</p> <p>10 Q. -- of April?</p> <p>11 How long did that discussion last?</p> <p>12 A. Less than five minutes.</p> <p>13 Q. And what was discussed?</p> <p>14 MS. KIRILA: Objection. To the extent</p> <p>15 it reveals anything that I specifically</p> <p>16 directed you to obtain for me, do not</p> <p>17 answer.</p> <p>18 Q. Did you learn any facts as a result of</p> <p>19 that discussion?</p> <p>20 A. Yes.</p> <p>21 Q. What facts did you learn?</p> <p>22 A. That really relates to the information</p> <p>23 that my counsel instructed me to obtain, so I</p> <p>24 can't respond.</p> <p>25 Q. There were no attorneys present during</p>
<p style="text-align: right;">Page 11</p> <p>1 C. Freeman</p> <p>2 Q. Did any of the documents you reviewed</p> <p>3 refresh your recollection as to any of the events</p> <p>4 in this case?</p> <p>5 A. I'm sure they did, but I can't -- I</p> <p>6 can't recall any epiphanies in terms of: Oh, aha!</p> <p>7 Q. Other than meeting with your attorney</p> <p>8 and Mr. Milkie, have you spoken to anyone in</p> <p>9 preparation for this deposition?</p> <p>10 A. Regarding the facts that we're</p> <p>11 discussing?</p> <p>12 Q. Regarding anything about the</p> <p>13 deposition, including facts that you might be</p> <p>14 asked about.</p> <p>15 A. Yes.</p> <p>16 Q. Who did you have that discussion with?</p> <p>17 A. Sandy Cranford.</p> <p>18 Q. Who is that?</p> <p>19 A. She is the director of human resources</p> <p>20 for Carowinds.</p> <p>21 Q. Was that one discussion or more than</p> <p>22 one discussion?</p> <p>23 A. I recall one discussion.</p> <p>24 Q. Do you remember when that was?</p> <p>25 A. Friday.</p>	<p style="text-align: right;">Page 13</p> <p>1 C. Freeman</p> <p>2 that conversation, were there?</p> <p>3 A. Yes.</p> <p>4 Q. Who was that?</p> <p>5 A. Duff Milkie.</p> <p>6 Q. He was present during your</p> <p>7 conversation with Sandy Cranford?</p> <p>8 A. Yes.</p> <p>9 Q. Have you talked about this case with</p> <p>10 anyone other than an attorney? Other than what</p> <p>11 you've already talked about.</p> <p>12 A. I reported to my boss on it.</p> <p>13 Q. Who is your boss?</p> <p>14 A. Dick Kinzel.</p> <p>15 Q. And what's his position?</p> <p>16 A. He's president and CEO, chairman,</p> <p>17 president, CEO of Cedar Fair Entertainment</p> <p>18 Company.</p> <p>19 Q. How many times did you report to</p> <p>20 Mr. Kinzel about the case?</p> <p>21 A. Several times.</p> <p>22 Q. During what period of time?</p> <p>23 A. From the time the case was filed to</p> <p>24 the present.</p> <p>25 Q. From the time the lawsuit was filed?</p>

4 (Pages 10 to 13)

<p style="text-align: right;">Page 14</p> <p>1 C. Freeman</p> <p>2 A. Yes.</p> <p>3 Q. What did you report to Mr. Kinzel?</p> <p>4 MS. KIRILA: Another instruction here.</p> <p>5 Object to the extent you are communicating</p> <p>6 anything that I directly instructed you to</p> <p>7 convey to Mr. Kinzel and any legal strategy.</p> <p>8 But other than that, you can answer.</p> <p>9 A. There were several conversations we</p> <p>10 had regarding the status of the case. Some of</p> <p>11 those conversations occurred in the presence of</p> <p>12 our attorney, our general counsel.</p> <p>13 THE WITNESS: So I would imagine those</p> <p>14 are protected.</p> <p>15 MS. KIRILA: Yes, do not testify as to</p> <p>16 those.</p> <p>17 A. I don't recall specific dates and</p> <p>18 conversations, and so forth. They were just</p> <p>19 general, you know, progress reports, updates, you</p> <p>20 know, making recommendations, getting direction,</p> <p>21 that sort of thing.</p> <p>22 Q. Can you tell me the substance of</p> <p>23 anything that was discussed in any of those</p> <p>24 meetings other than privileged material?</p> <p>25 MS. KIRILA: And I will also instruct</p>	<p style="text-align: right;">Page 16</p> <p>1 C. Freeman</p> <p>2 money or PPI this money, I'm sorry, owes PPI this</p> <p>3 money and why he thinks it's OK for him to do what</p> <p>4 he did.</p> <p>5 Q. That's something Mr. Kinzel actually</p> <p>6 said or that was your impression of what he was</p> <p>7 thinking?</p> <p>8 A. That's a summary of his -- of what he</p> <p>9 has said.</p> <p>10 Q. Anything else?</p> <p>11 A. Not that I recall.</p> <p>12 Q. In any of your meetings and</p> <p>13 discussions with Mr. Kinzel where counsel were</p> <p>14 present was there any nonattorney present from</p> <p>15 outside the company in any of those meetings?</p> <p>16 A. No.</p> <p>17 Q. Are you an attorney?</p> <p>18 A. No.</p> <p>19 Q. Have you ever attended law school?</p> <p>20 A. No.</p> <p>21 Q. Do you have any type of legal</p> <p>22 training?</p> <p>23 A. Not beyond taking business law courses</p> <p>24 in college.</p> <p>25 Q. Just following up on the last series</p>
<p style="text-align: right;">Page 15</p> <p>1 C. Freeman</p> <p>2 you if you're not sure whether Duff was</p> <p>3 there or not, do not guess. Only testify</p> <p>4 about those which you know Duff was not</p> <p>5 present or other counsel.</p> <p>6 A. I don't have specific recollection of</p> <p>7 the substance of specific conversations.</p> <p>8 Q. Do you recall anything that Mr. Kinzel</p> <p>9 said in any of those discussions?</p> <p>10 MS. KIRILA: Same instruction.</p> <p>11 A. Something to the effect that, you</p> <p>12 know, this could all be over with if Mr. Nail</p> <p>13 would just write us a check for what he owes us.</p> <p>14 Q. Mr. Kinzel said that?</p> <p>15 A. Yes.</p> <p>16 Q. Did you have any response to that?</p> <p>17 A. I had my marching orders.</p> <p>18 Q. I am just asking if you responded to</p> <p>19 that comment at all.</p> <p>20 A. I think my response was that I just --</p> <p>21 I understood.</p> <p>22 Q. Do you recall anything else that</p> <p>23 Mr. Kinzel said in any of those discussions?</p> <p>24 A. He has -- he has wondered why Mr. Nail</p> <p>25 doesn't understand that he owes Cedar Fair this</p>	<p style="text-align: right;">Page 17</p> <p>1 C. Freeman</p> <p>2 of questions, other than Sandy Cranford and</p> <p>3 Mr. Kinzel did you have any discussions with any</p> <p>4 other nonattorneys regarding this case?</p> <p>5 A. What type of discussions?</p> <p>6 Q. Any type of discussions,</p> <p>7 correspondence, regarding this case.</p> <p>8 A. I'm sure I have mentioned in brief to</p> <p>9 our human resources director, corporate HR</p> <p>10 director.</p> <p>11 Q. Which is?</p> <p>12 A. Her name is Billy Clark.</p> <p>13 Q. Do you remember any discussions or</p> <p>14 correspondence you had with Ms. Clark regarding</p> <p>15 this case that would not be privileged?</p> <p>16 A. Nothing specific. Just general</p> <p>17 updates.</p> <p>18 Q. Do you recall anything specific that</p> <p>19 either you or she said in any of those</p> <p>20 discussions?</p> <p>21 A. No.</p> <p>22 Q. Anyone other than Ms. Clark,</p> <p>23 Mr. Kinzel and Ms. Cranford?</p> <p>24 A. My assistant.</p> <p>25 Q. Who is that?</p>

5 (Pages 14 to 17)

<p style="text-align: right;">Page 18</p> <p>1 C. Freeman</p> <p>2 A. Ruth Hufnagle.</p> <p>3 Q. Do you have any substantive</p> <p>4 communications with her about the case?</p> <p>5 A. No, just enlisting her assistance to</p> <p>6 gather documents for discovery, and so forth.</p> <p>7 Q. Anyone else?</p> <p>8 A. Conversations surrounding that.</p> <p>9 Q. Anyone else?</p> <p>10 A. Veronica Dowd.</p> <p>11 Q. Who is she?</p> <p>12 A. She's on my staff, also. And she is</p> <p>13 our, she's a human resources manager, corporate</p> <p>14 human resources manager.</p> <p>15 Q. What did you discuss with her about</p> <p>16 the case?</p> <p>17 A. Just information gathering, because</p> <p>18 she has access to the human resources system.</p> <p>19 Q. What specific information did you talk</p> <p>20 to her about gathering?</p> <p>21 A. Just information regarding Mr. Nail's</p> <p>22 benefits, and so forth.</p> <p>23 Q. Benefits and what else?</p> <p>24 A. That's really all I recall.</p> <p>25 Q. Was that for the purpose of responding</p>	<p style="text-align: right;">Page 20</p> <p>1 C. Freeman</p> <p>2 A. Business administration.</p> <p>3 Q. What year did you obtain that degree?</p> <p>4 A. 1977.</p> <p>5 Q. Do you have any other degrees?</p> <p>6 A. An associate of arts degree from</p> <p>7 Fullerton College.</p> <p>8 Q. Anything else?</p> <p>9 A. MBA from California State University</p> <p>10 at Fullerton.</p> <p>11 Q. Anything else?</p> <p>12 A. That's it.</p> <p>13 Q. Do you have any other post high school</p> <p>14 education other than what you've already</p> <p>15 described?</p> <p>16 A. No.</p> <p>17 Q. Do you have any professional -- other</p> <p>18 professional training other than what you've</p> <p>19 already described?</p> <p>20 A. Seminars and things like that.</p> <p>21 Q. Relating to what?</p> <p>22 A. Gosh. Business, you know, leadership,</p> <p>23 professional development.</p> <p>24 Q. Anything relating to executive</p> <p>25 contracts or compensation or anything like that?</p>
<p style="text-align: right;">Page 19</p> <p>1 C. Freeman</p> <p>2 to discovery requests in this case?</p> <p>3 A. Yes.</p> <p>4 Q. Anyone else?</p> <p>5 A. No. Not that I recall.</p> <p>6 Q. Did you speak to Peter Cragé [Craig]</p> <p>7 about this case?</p> <p>8 A. I don't recall any conversations that</p> <p>9 I had with Mr. Cragé.</p> <p>10 Q. It's pronounced Cragé?</p> <p>11 A. Yes.</p> <p>12 Q. OK. In your discussions with</p> <p>13 Mr. Kinzel you indicated that he wondered why</p> <p>14 Mr. Nail didn't understand that he owes money,</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. Did he say why he believed that</p> <p>18 Mr. Nail owed the company money?</p> <p>19 A. I don't recall him elaborating.</p> <p>20 Q. Where did you go to college?</p> <p>21 A. Where did I go to college?</p> <p>22 Q. Yes.</p> <p>23 A. I, my bachelor's degree was from the</p> <p>24 University of Southern California.</p> <p>25 Q. What is your degree in?</p>	<p style="text-align: right;">Page 21</p> <p>1 C. Freeman</p> <p>2 A. No.</p> <p>3 Q. Do you have any professional licenses?</p> <p>4 A. No.</p> <p>5 Q. Or professional certificates?</p> <p>6 A. No.</p> <p>7 Q. Have you ever had any training in</p> <p>8 human resources?</p> <p>9 A. Um, seminars regarding union matters.</p> <p>10 Q. Other than that?</p> <p>11 A. No.</p> <p>12 Q. Where are you currently employed?</p> <p>13 A. Cedar Fair.</p> <p>14 Q. Cedar Fair LP?</p> <p>15 A. Cedar Fair LP. That's the parent</p> <p>16 company. Technically my employer is Magnum</p> <p>17 Management Corporation which is a subsidiary of</p> <p>18 Cedar Fair LP.</p> <p>19 Q. So Magnum is your employer.</p> <p>20 A. Yes.</p> <p>21 Q. That's a wholly owned subsidiary of</p> <p>22 Cedar Fair?</p> <p>23 A. I'm trying to recall the entity's</p> <p>24 structure and I believe it is wholly owned by</p> <p>25 Cedar Fair.</p>

6 (Pages 18 to 21)

<p style="text-align: right;">Page 30</p> <p>1 C. Freeman</p> <p>2 manager at the Camp Snoopy park at Mall of America</p> <p>3 he would -- he would make stewardship visits to</p> <p>4 the park and I would report to him on the status</p> <p>5 of our business and we would meet on various</p> <p>6 issues. And I would have occasional phone</p> <p>7 conversations with him.</p> <p>8 Q. Would you describe him as a pretty</p> <p>9 hands-on president and CEO?</p> <p>10 A. As the business has grown he has been</p> <p>11 forced to I guess become more and more removed,</p> <p>12 and in fact from an organizational standpoint</p> <p>13 he's, um, he's put people, more people between him</p> <p>14 and the operations.</p> <p>15 Q. When did that change start to occur?</p> <p>16 A. In early 2005 he brought in a chief</p> <p>17 operating officer. And the general managers as of</p> <p>18 that time, the general managers at the parks no</p> <p>19 longer reported to Mr. Kinzel. They reported to</p> <p>20 the CEO.</p> <p>21 Q. Who was that?</p> <p>22 A. Jack Falfas.</p> <p>23 Q. Falfas?</p> <p>24 A. F-a-l-f-a-s.</p> <p>25 Q. Is he still there?</p>	<p style="text-align: right;">Page 32</p> <p>1 C. Freeman</p> <p>2 Q. Other than his staff meetings how</p> <p>3 often do you meet with him in person</p> <p>4 approximately?</p> <p>5 A. Every several weeks.</p> <p>6 Q. Where is his office in relation to</p> <p>7 your office?</p> <p>8 A. A couple of miles away.</p> <p>9 Q. So he's in a different building?</p> <p>10 A. Yes.</p> <p>11 Q. In the same city?</p> <p>12 A. Yes.</p> <p>13 Q. Has your level of interaction with him</p> <p>14 remained fairly consistent since September 2005?</p> <p>15 A. Yes.</p> <p>16 Q. In your experience was Mr. Kinzel</p> <p>17 typically involved in the termination of employees</p> <p>18 at the vice president level and above?</p> <p>19 A. Yes.</p> <p>20 Q. How was he involved?</p> <p>21 A. Depending on the type of termination,</p> <p>22 it can be, you know, a specific situational</p> <p>23 involvement or it could be more of a general</p> <p>24 involvement.</p> <p>25 Q. Was he consulted on all such</p>
<p style="text-align: right;">Page 31</p> <p>1 C. Freeman</p> <p>2 A. Yes.</p> <p>3 Q. In the same position?</p> <p>4 A. Yes.</p> <p>5 Q. Where is your office located?</p> <p>6 A. Sandusky, Ohio.</p> <p>7 Q. Has it always been located there while</p> <p>8 you have had this position?</p> <p>9 A. Yes.</p> <p>10 Q. In your current position what kind of</p> <p>11 interactions do you have with Mr. Kinzel?</p> <p>12 A. I talk to him on the phone and I meet</p> <p>13 with him on an ad hoc basis when I have things to</p> <p>14 review and go over with him and attend his staff</p> <p>15 meetings.</p> <p>16 Q. How often would you say you talk to</p> <p>17 him on the phone?</p> <p>18 A. Average, three times a week.</p> <p>19 Q. How often does he hold the staff</p> <p>20 meetings?</p> <p>21 A. Generally weekly unless -- unless</p> <p>22 there's a conflict.</p> <p>23 Q. Is there a specific day of the week he</p> <p>24 usually holds them on?</p> <p>25 A. It moves around.</p>	<p style="text-align: right;">Page 33</p> <p>1 C. Freeman</p> <p>2 terminations?</p> <p>3 MS. KIRILA: Objection. To the extent</p> <p>4 of your knowledge and your involvement you</p> <p>5 can answer.</p> <p>6 A. He authorizes them.</p> <p>7 Q. He has to approve them, correct?</p> <p>8 A. Yes.</p> <p>9 Q. In the weekly staff meetings with</p> <p>10 Mr. Kinzel were they recorded in any way?</p> <p>11 A. No. I'm sorry, yes.</p> <p>12 Q. How were they recorded?</p> <p>13 A. One of the attendees takes general</p> <p>14 notes.</p> <p>15 Q. Did you personally take notes during</p> <p>16 the meetings?</p> <p>17 A. For my own benefit?</p> <p>18 Q. Yes.</p> <p>19 A. Yes.</p> <p>20 Q. Do you still have any of those?</p> <p>21 A. Yes.</p> <p>22 Q. The person who was taking general</p> <p>23 notes of the meeting, were those distributed</p> <p>24 afterwards?</p> <p>25 A. Yes.</p>

9 (Pages 30 to 33)



<p style="text-align: right;">Page 34</p> <p>1 C. Freeman</p> <p>2 Q. They were sort of like the minutes of</p> <p>3 the meeting?</p> <p>4 A. Yes.</p> <p>5 Q. And were they distributed to you?</p> <p>6 A. Yes.</p> <p>7 Q. Do you still have any of those?</p> <p>8 A. Yes.</p> <p>9 Q. How far back would you say that you</p> <p>10 keep either your own personal notes or the minutes</p> <p>11 of those staff meetings?</p> <p>12 A. Quite a while. Going back quite a</p> <p>13 while.</p> <p>14 Q. In your experience did Mr. Kinzel have</p> <p>15 to approve employment contracts with executives?</p> <p>16 A. New employment contracts?</p> <p>17 Q. Yes.</p> <p>18 A. Yes.</p> <p>19 Q. Did he have to approve all employment</p> <p>20 contracts or only those at a certain level and</p> <p>21 above?</p> <p>22 A. All employment contracts.</p> <p>23 Q. In your experience was Mr. Kinzel ever</p> <p>24 involved in hiring employees?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 36</p> <p>1 C. Freeman</p> <p>2 point he was the corporate treasurer and I met him</p> <p>3 in those capacities, when we were both in those</p> <p>4 capacities.</p> <p>5 Q. Do you know when he obtained his</p> <p>6 current position?</p> <p>7 A. July of 2005.</p> <p>8 Q. As of September 2005 going forward did</p> <p>9 you have any interactions with him?</p> <p>10 A. Yes.</p> <p>11 Q. What types of interactions did you</p> <p>12 have with him?</p> <p>13 A. Given that we are peers on the</p> <p>14 corporate staff, we interact frequently regarding</p> <p>15 various business matters.</p> <p>16 Q. What types of matters?</p> <p>17 A. A couple of examples, ride purchases,</p> <p>18 um --</p> <p>19 Q. You said ride, r-i-d-e?</p> <p>20 A. Ride, r-i-d-e, ride purchases, um,</p> <p>21 benefits issues as it relates to the financial</p> <p>22 implications.</p> <p>23 Q. Do you interact on human resources</p> <p>24 issues?</p> <p>25 A. With Mr. Crage?</p>
<p style="text-align: right;">Page 35</p> <p>1 C. Freeman</p> <p>2 Q. How was he involved in hiring</p> <p>3 employees?</p> <p>4 A. He conducts interviews for senior</p> <p>5 level positions.</p> <p>6 Q. Did he interview you for your current</p> <p>7 position?</p> <p>8 A. Yes.</p> <p>9 Q. And I presume he would have approval</p> <p>10 over hiring of senior level positions, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know Peter Crage?</p> <p>13 A. Yes.</p> <p>14 Q. How do you know him?</p> <p>15 A. He is a coworker.</p> <p>16 Q. What is his position?</p> <p>17 A. Corporate vice president and chief</p> <p>18 financial officer.</p> <p>19 Q. Of what entity?</p> <p>20 A. Cedar Fair LP.</p> <p>21 Q. How long have you known Peter Crage?</p> <p>22 A. Probably six years or so.</p> <p>23 Q. How did you first come to know him?</p> <p>24 A. When I was the general manager at Mall</p> <p>25 of America, Camp Snoopy Mall of America, at one</p>	<p style="text-align: right;">Page 37</p> <p>1 C. Freeman</p> <p>2 Q. Yes.</p> <p>3 A. Not typically unless as I said there's</p> <p>4 some sort of a financial ramification, like we're</p> <p>5 bidding out benefit packages or vendors or</p> <p>6 programs or whatever. We're both on the</p> <p>7 retirement plan advisory committee.</p> <p>8 Q. Where is Mr. Crage's office in</p> <p>9 relation to your office?</p> <p>10 A. A couple of miles away.</p> <p>11 Q. He's in the same building as</p> <p>12 Mr. Kinzel?</p> <p>13 A. Not the same building, but an</p> <p>14 adjacent, um --</p> <p>15 Q. Complex?</p> <p>16 A. -- building. Yes, the same complex.</p> <p>17 Q. How frequently would you say that you</p> <p>18 interact with Mr. Crage?</p> <p>19 A. About the same as Mr. Kinzel. Several</p> <p>20 times a week.</p> <p>21 Q. Is he also at the staff meetings?</p> <p>22 A. Yes.</p> <p>23 Q. Has your level of interaction with</p> <p>24 Mr. Crage remained fairly consistent since</p> <p>25 September of 2005 to the present?</p>

10 (Pages 34 to 37)

<p style="text-align: right;">Page 46</p> <p>1 C. Freeman</p> <p>2 the parks?</p> <p>3 A. They are on or adjacent to or nearby.</p> <p>4 They are associated with the amusement parks.</p> <p>5 Q. Do you know how many hotel properties</p> <p>6 that Cedar Fair owns or operates?</p> <p>7 A. Five hotels, yeah, I think they are</p> <p>8 five hotels and there are campgrounds.</p> <p>9 Q. How many campgrounds?</p> <p>10 A. I think three or four. Four.</p> <p>11 Q. Is Cedar Fair engaged in any other</p> <p>12 businesses?</p> <p>13 A. Not that I can think of right now.</p> <p>14 Q. Does it have any subsidiaries that are</p> <p>15 engaged in any other businesses?</p> <p>16 A. No.</p> <p>17 Q. Who are -- from now on when I say</p> <p>18 Cedar Fair, just to make it easy, I mean Cedar</p> <p>19 Fair and its subsidiaries, OK?</p> <p>20 A. Sure.</p> <p>21 Q. Who are Cedar Fair's competitors?</p> <p>22 MS. KIRILA: Objection. Relevance.</p> <p>23 There's no dispute over noncompete here.</p> <p>24 You can answer the question, but I'm</p> <p>25 not going to get into competitiveness when</p>	<p style="text-align: right;">Page 48</p> <p>1 C. Freeman</p> <p>2 Q. Is that the same thing?</p> <p>3 A. Yes. As well as benefit transition</p> <p>4 issues, converting the benefits from CBS.</p> <p>5 Q. Who did you work with on the benefits</p> <p>6 transition issues?</p> <p>7 A. Internally primarily Sandy Cranford.</p> <p>8 Q. Who did you work with at CBS, if</p> <p>9 anyone, on those benefit transition issues?</p> <p>10 A. Primary contact, team leader if you</p> <p>11 will on that side that I recall was Deb Bernes.</p> <p>12 Q. Anything else?</p> <p>13 A. That's my recollection of significant</p> <p>14 things I was involved in.</p> <p>15 Q. How were you involved in the due</p> <p>16 diligence? What did you do?</p> <p>17 A. Information gathering, going out to</p> <p>18 the data site and reviewing agreements and</p> <p>19 policies and benefits and just gathering</p> <p>20 information related to the responsibilities that I</p> <p>21 previously related.</p> <p>22 Q. Did you report to anyone at Cedar Fair</p> <p>23 regarding the due diligence process?</p> <p>24 A. I reported to the CEO, Dick Kinzel.</p> <p>25 Q. Who else did you work with from Cedar</p>
<p style="text-align: right;">Page 47</p> <p>1 C. Freeman</p> <p>2 this isn't an issue in the case. Go ahead.</p> <p>3 A. Six Flags, Busch Entertainment, I</p> <p>4 guess Disney, Universal, Herschend Entertainment,</p> <p>5 H-e-r-s-c-h-e-n-d. I am not sure the C is in</p> <p>6 there, but we'll go with it. Parc, which is</p> <p>7 P-a-r-c, I believe is how it's spelled, owns</p> <p>8 several properties in the U.S. Kennywood</p> <p>9 Entertainment.</p> <p>10 Those are the big ones I can think of.</p> <p>11 Q. Does Cedar Fair do any business</p> <p>12 outside of the U.S. and Canada?</p> <p>13 A. No.</p> <p>14 Q. Were you involved in the acquisition</p> <p>15 of PPI by Cedar Fair?</p> <p>16 A. Yes.</p> <p>17 Q. I believe you testified earlier you</p> <p>18 were involved in the due diligence, correct?</p> <p>19 A. Yes.</p> <p>20 Q. Were you involved in any other way?</p> <p>21 A. Transition, the transition issues</p> <p>22 related to human resources and legal matters.</p> <p>23 Q. That's what you testified to before as</p> <p>24 far as your interactions with Mr. Nail.</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 49</p> <p>1 C. Freeman</p> <p>2 Fair on the due diligence process?</p> <p>3 A. Peter Cragg and -- oh, our attorneys,</p> <p>4 Squire Sanders.</p> <p>5 Q. Anyone else that you recall who you</p> <p>6 worked with on due diligence?</p> <p>7 A. You know, I have just vague</p> <p>8 recollections. Nobody specific that I can say I</p> <p>9 definitely remember working with this person.</p> <p>10 Q. Are there any point people at CBS or</p> <p>11 PPI before the acquisition that you worked with on</p> <p>12 the due diligence process?</p> <p>13 A. Separating due diligence from</p> <p>14 integration, right?</p> <p>15 Q. Correct.</p> <p>16 A. Due diligence because we were in a</p> <p>17 competitive bid situation, it was all very much</p> <p>18 funneled, and so I really didn't work with anybody</p> <p>19 at CBS during that process.</p> <p>20 Q. What about for the integration, who</p> <p>21 were the point people?</p> <p>22 A. As I mentioned previously, I worked</p> <p>23 with Lester, Sandy Cranford, Deb Bernes from CBS,</p> <p>24 our attorneys from Squire Sanders, our benefits</p> <p>25 consultants, benefits brokers I guess and</p>

13 (Pages 46 to 49)

<p style="text-align: right;">Page 50</p> <p>1 C. Freeman</p> <p>2 consultants.</p> <p>3 Q. What were your interactions with</p> <p>4 Mr. Nail prior to the closing date of the</p> <p>5 acquisition?</p> <p>6 A. I recall a trip down there a couple of</p> <p>7 weeks before the closing date where we had pretty</p> <p>8 much an all-day meeting where Lester gave me an</p> <p>9 orientation to the, in particular the legal</p> <p>10 matters that were outstanding and the functions of</p> <p>11 his area of responsibility.</p> <p>12 Q. Was there anyone else in attendance at</p> <p>13 that meeting?</p> <p>14 A. He would, um, as I recall, he would</p> <p>15 call in the paralegal, or referred to her or asked</p> <p>16 her questions periodically on an ad hoc basis, but</p> <p>17 she didn't actually participate in the meeting.</p> <p>18 Q. Other than that meeting did you have</p> <p>19 any interactions with Mr. Nail prior to the</p> <p>20 closing date of the acquisition?</p> <p>21 A. I don't believe we had any other</p> <p>22 personal meetings. I'm sure we had phone</p> <p>23 conversations and -- but I don't know what -- I</p> <p>24 don't have any specific recollection.</p> <p>25 Q. Was it regarding similar type</p>	<p style="text-align: right;">Page 52</p> <p>1 C. Freeman</p> <p>2 A. I told him I couldn't answer the</p> <p>3 question.</p> <p>4 Q. Did you know at the time or you</p> <p>5 couldn't answer it for -- or you weren't permitted</p> <p>6 to answer it?</p> <p>7 A. At that time I don't know whether his</p> <p>8 specific status had been a hundred percent</p> <p>9 confirmed.</p> <p>10 Q. Other than that discussion with</p> <p>11 Mr. Nail were you involved in any internal</p> <p>12 discussions with anyone at Cedar Fair regarding</p> <p>13 who would stay and who would go after the</p> <p>14 acquisition?</p> <p>15 A. Yes.</p> <p>16 Q. Who were those discussions with?</p> <p>17 A. Dick Kinzel.</p> <p>18 Q. Anyone else?</p> <p>19 A. I don't have specific recollection of</p> <p>20 who would have been present.</p> <p>21 Q. Was that one discussion or more than</p> <p>22 one discussion?</p> <p>23 A. I'm sure it was more than one</p> <p>24 discussion.</p> <p>25 Q. When were those discussions in</p>
<p style="text-align: right;">Page 51</p> <p>1 C. Freeman</p> <p>2 transitional matters regarding litigation and what</p> <p>3 not?</p> <p>4 A. I don't recall specifically.</p> <p>5 Q. Prior to the closing date of the</p> <p>6 acquisition were you involved in any discussions</p> <p>7 regarding what would happen to Mr. Nail and the</p> <p>8 other incumbent PPI executives after the</p> <p>9 acquisition closed?</p> <p>10 A. Mr. Nail asked me about it on --</p> <p>11 Mr. Nail asked me about it and I indicated to him</p> <p>12 that I could not give him an answer.</p> <p>13 Q. Was that during the all-day meeting</p> <p>14 you described?</p> <p>15 A. That was, yeah, he did ask about it</p> <p>16 during that meeting.</p> <p>17 Q. What did he ask?</p> <p>18 A. He asked about his status.</p> <p>19 Q. Whether he would continue to be</p> <p>20 employed after the acquisition?</p> <p>21 A. Um, yes. He asked it in a very -- my</p> <p>22 recollection is he asked about it in a somewhat</p> <p>23 roundabout way, but what I inferred from what he</p> <p>24 was asking was that.</p> <p>25 Q. What did you respond?</p>	<p style="text-align: right;">Page 53</p> <p>1 C. Freeman</p> <p>2 relation to the June 30th, 2006 closing date?</p> <p>3 A. I would say there were some before and</p> <p>4 some after.</p> <p>5 Q. Focusing on the ones that took place</p> <p>6 before the closing date, do you recall how soon</p> <p>7 before the closing date those took place?</p> <p>8 A. No.</p> <p>9 Q. Do you recall what was discussed in</p> <p>10 the discussions before the closing date regarding</p> <p>11 who would stay and who would go?</p> <p>12 A. Not specifically, no.</p> <p>13 Q. Were any decisions made?</p> <p>14 A. Yes.</p> <p>15 Q. What decisions were made?</p> <p>16 A. A decision was made to put the, um,</p> <p>17 put certain members of the senior executive team</p> <p>18 on administrative leave effective as of the</p> <p>19 closing date.</p> <p>20 Q. Certain members of PPI's executive</p> <p>21 team.</p> <p>22 A. Yes.</p> <p>23 Q. Which members?</p> <p>24 A. If I tried to come up with a list I'd</p> <p>25 miss somebody, but...</p>

14 (Pages 50 to 53)

<p style="text-align: right;">Page 54</p> <p>1 C. Freeman</p> <p>2 Q. Well, give me who you remember with</p> <p>3 the understanding that it may not be complete.</p> <p>4 A. OK. Mr. Weber.</p> <p>5 Q. Al Weber?</p> <p>6 A. Al Weber.</p> <p>7 Q. What was his position at PPI?</p> <p>8 A. CEO.</p> <p>9 Tim Fisher.</p> <p>10 Q. What was his position?</p> <p>11 A. I don't recall what his exact title</p> <p>12 was.</p> <p>13 Mike Koontz, CFO.</p> <p>14 David Thornton.</p> <p>15 Brett Petit or Petit, P-e-t-i-t.</p> <p>16 Q. I'm sorry, do you know what position</p> <p>17 Mr. Thornton was?</p> <p>18 A. I don't recall his exact title.</p> <p>19 Q. Do you recall it generally?</p> <p>20 A. He was a vice president involved in</p> <p>21 some creative or design capacity.</p> <p>22 Q. What about Mr. Petit or Petite?</p> <p>23 A. Vice president marketing.</p> <p>24 Q. Anyone else?</p> <p>25 A. Pat Jones.</p>	<p style="text-align: right;">Page 56</p> <p>1 C. Freeman</p> <p>2 A. That means that they would be relieved</p> <p>3 of their duties during the administrative leave</p> <p>4 period and continue to be employed.</p> <p>5 Q. Did all of those people have</p> <p>6 employment contracts with PPI?</p> <p>7 A. Yes.</p> <p>8 MS. KIRILA: Restroom break when you</p> <p>9 get to a convenient point?</p> <p>10 MR. PAPPAS: Now is good.</p> <p>11 MS. KIRILA: Five minutes?</p> <p>12 MR. PAPPAS: Sure.</p> <p>13 (A recess was taken from 10:22 to</p> <p>14 10:31 a.m.)</p> <p>15 BY MR. PAPPAS:</p> <p>16 Q. In your discussions with Mr. Kinzel</p> <p>17 regarding the individuals that you just testified</p> <p>18 about being placed on administrative leave, as you</p> <p>19 put it, who made the decision to select those</p> <p>20 individuals?</p> <p>21 A. The final decision was Mr. Kinzel's.</p> <p>22 Q. Did you have, give him any input into</p> <p>23 that final decision?</p> <p>24 A. With respect to the area that I -- oh,</p> <p>25 OK. Not with respect to those individuals.</p>
<p style="text-align: right;">Page 55</p> <p>1 C. Freeman</p> <p>2 Q. Position?</p> <p>3 A. Vice president resale.</p> <p>4 Dale Kaetzel.</p> <p>5 Q. What was his position?</p> <p>6 A. He was the general manager at Canada's</p> <p>7 Wonderland.</p> <p>8 I think Bob White might have been part</p> <p>9 of that group. He was the general manager at</p> <p>10 Carowinds.</p> <p>11 That's all I'm recalling, and even</p> <p>12 that group I'm -- I'm -- the date, there might be</p> <p>13 a couple of days, a few days of, you know, where</p> <p>14 something happened on June 30th and others</p> <p>15 happened a few days later.</p> <p>16 Q. So prior to the June 30th closing date</p> <p>17 you had discussions with Mr. Kinzel in which it</p> <p>18 was decided that the individuals that you just</p> <p>19 listed and possibly others would no longer</p> <p>20 continue to be employed after the acquisition?</p> <p>21 MS. KIRILA: Objection. Misstates his</p> <p>22 testimony. You can answer.</p> <p>23 A. We discussed putting them on</p> <p>24 administrative leave.</p> <p>25 Q. What does that mean?</p>	<p style="text-align: right;">Page 57</p> <p>1 C. Freeman</p> <p>2 Q. Do you know if anyone else had given</p> <p>3 him input as to those individuals?</p> <p>4 A. I don't have specific knowledge.</p> <p>5 Q. But it was only you and Mr. Kinzel</p> <p>6 involved in those discussions regarding selecting</p> <p>7 those individuals for administrative leave; is</p> <p>8 that correct?</p> <p>9 A. I can't tell you. I -- there may have</p> <p>10 been other people involved in the discussions, but</p> <p>11 I don't recall specifically who.</p> <p>12 Q. Was there anyone else present when you</p> <p>13 and Mr. Kinzel were having those discussions?</p> <p>14 A. I don't recall.</p> <p>15 Q. Were those discussions on the phone or</p> <p>16 in person?</p> <p>17 A. I don't recall.</p> <p>18 Q. In your discussions with Mr. Kinzel</p> <p>19 prior to the closing date of the acquisition did</p> <p>20 you and he have occasion to discuss Lester Nail?</p> <p>21 A. Can you repeat the question?</p> <p>22 Q. Sure, in your discussions with</p> <p>23 Mr. Kinzel prior to the closing date of the</p> <p>24 acquisition did you and he have occasion to</p> <p>25 discuss Mr. Nail?</p>

15 (Pages 54 to 57)

<p style="text-align: right;">Page 58</p> <p>1 C. Freeman</p> <p>2 A. Yes.</p> <p>3 Q. What was discussed about Mr. Nail?</p> <p>4 A. What role he might play</p> <p>5 postacquisition.</p> <p>6 Q. What was discussed about that?</p> <p>7 A. Whether given the transitional needs</p> <p>8 of the business and the issues that were on our</p> <p>9 plate from legal and human resources standpoint,</p> <p>10 to what extent we'd be utilizing Mr. Nail's</p> <p>11 services.</p> <p>12 Q. Were any conclusions reached as to</p> <p>13 what to do with Mr. Nail after the acquisition?</p> <p>14 A. After the acquisition?</p> <p>15 Q. What to do with him after the</p> <p>16 acquisition.</p> <p>17 A. In these discussions prior to the</p> <p>18 closing?</p> <p>19 Q. Correct.</p> <p>20 A. We were not completely sure, which</p> <p>21 is -- we just weren't completely sure.</p> <p>22 Q. Was it your understanding that</p> <p>23 Mr. Kinzel was considering keeping Mr. Nail on</p> <p>24 permanently or was it just a matter of when he</p> <p>25 would ultimately be relieved of his duties?</p>	<p style="text-align: right;">Page 60</p> <p>1 C. Freeman</p> <p>2 Q. How do you know that that was the</p> <p>3 reason?</p> <p>4 A. I am looking at the organization that</p> <p>5 was in place to support the company</p> <p>6 postacquisition and in looking at the positions</p> <p>7 that they held, that's my conclusion.</p> <p>8 Q. Is that based on any discussions you</p> <p>9 had with Mr. Kinzel or anyone else or is that</p> <p>10 simply your conclusion?</p> <p>11 A. It's my conclusion.</p> <p>12 Q. Did Mr. Kinzel say or give you his</p> <p>13 reasoning for selecting those individuals?</p> <p>14 A. Not that I recall.</p> <p>15 (Mr. Nail joined the deposition.)</p> <p>16 Q. Did you take any notes during your</p> <p>17 discussions with Mr. Kinzel prior to closing about</p> <p>18 who would stay and who would go?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Did he take any notes?</p> <p>21 A. Not that I recall.</p> <p>22 Q. Are you aware of anything in writing</p> <p>23 discussing or memorializing those meetings and</p> <p>24 discussions?</p> <p>25 A. Not that I recall.</p>
<p style="text-align: right;">Page 59</p> <p>1 C. Freeman</p> <p>2 MS. KIRILA: Object to form. You can</p> <p>3 answer.</p> <p>4 A. We were -- we were not sure to what</p> <p>5 extent the outstanding issues and matters would</p> <p>6 require Mr. Nail's personal attention and for what</p> <p>7 length of time.</p> <p>8 Q. So were any decisions made about</p> <p>9 Mr. Nail's status prior to the closing date?</p> <p>10 A. A decision was made not to include him</p> <p>11 in the group that was placed on administrative</p> <p>12 leave.</p> <p>13 Q. Then no decision was made as to what</p> <p>14 would ultimately become of Mr. Nail. At least no</p> <p>15 decision was made prior to the closing date.</p> <p>16 A. Prior to the closing date I don't</p> <p>17 recall a decision was made.</p> <p>18 Q. Do you know the reasons why those</p> <p>19 individuals you listed were selected to be placed</p> <p>20 on administrative leave and relieved of their</p> <p>21 duties?</p> <p>22 A. Because with the integration of the</p> <p>23 organizations their functions became redundant and</p> <p>24 so therefore at that time their services were not</p> <p>25 required.</p>	<p style="text-align: right;">Page 61</p> <p>1 C. Freeman</p> <p>2 Q. Did you have any discussions with</p> <p>3 anyone other than Mr. Kinzel prior to the closing</p> <p>4 date about which PPI executives would stay and</p> <p>5 which would go?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Prior to the closing date of the</p> <p>8 acquisition did you discuss Mr. Nail with anyone</p> <p>9 at PPI?</p> <p>10 A. Not that I recall.</p> <p>11 Q. What about anyone at CBS?</p> <p>12 A. Not that I recall.</p> <p>13 Q. Prior to the closing date did you</p> <p>14 discuss Mr. Nail with anyone at Cedar Fair other</p> <p>15 than Mr. Kinzel?</p> <p>16 A. Not that I recall.</p> <p>17 Q. Do you recall anything else in your</p> <p>18 discussions with Mr. Kinzel preclosing that you</p> <p>19 discussed with him about Mr. Nail?</p> <p>20 A. No.</p> <p>21 Q. Do you know Mr. Nail's position at PPI</p> <p>22 prior to the acquisition?</p> <p>23 A. General counsel.</p> <p>24 Q. And prior to the closing date were you</p> <p>25 aware that Mr. Nail and other PPI executives had</p>

16 (Pages 58 to 61)



<p style="text-align: right;">Page 62</p> <p>1 C. Freeman</p> <p>2 employment agreements with PPI?</p> <p>3 A. Yes.</p> <p>4 Q. How were you aware of that?</p> <p>5 A. Through the due diligence process.</p> <p>6 Q. Those were provided to you by CBS?</p> <p>7 A. Yes.</p> <p>8 Q. Did you personally see Mr. Nail's</p> <p>9 employment agreement prior to the closing?</p> <p>10 A. Yes.</p> <p>11 Q. When was the first time you saw it?</p> <p>12 A. I don't know the specific date.</p> <p>13 Q. Did you see all of the executive</p> <p>14 employment agreements with PPI?</p> <p>15 A. I saw several. I don't know whether</p> <p>16 there were any I didn't see, but I -- I know I saw</p> <p>17 several.</p> <p>18 Q. Were they all the same agreement or</p> <p>19 were there variations?</p> <p>20 A. There were variations.</p> <p>21 Q. Did anyone else have the same type of</p> <p>22 agreement as Mr. Nail?</p> <p>23 A. Yes.</p> <p>24 Q. Who?</p> <p>25 A. As I recall, Mr. Rankin, Mr. Thornton,</p>	<p style="text-align: right;">Page 64</p> <p>1 C. Freeman</p> <p>2 postacquisition?</p> <p>3 A. He was executive vice president</p> <p>4 general manager of Kings Dominion.</p> <p>5 Q. Anyone else?</p> <p>6 A. Mr. Ross was retained.</p> <p>7 Q. What was his position pre- and</p> <p>8 postacquisition?</p> <p>9 A. Well, immediately prior to the</p> <p>10 acquisition he was -- he was like on a special</p> <p>11 assignment. He was an executive vice president of</p> <p>12 the company. Postacquisition he was the vice</p> <p>13 president of marketing for King's Island.</p> <p>14 Q. Anyone else?</p> <p>15 A. Mr. Rankin was retained.</p> <p>16 Q. What was his position pre- and</p> <p>17 postacquisition?</p> <p>18 A. He was the vice president and general</p> <p>19 manager of the Great America Park.</p> <p>20 Q. Anyone else?</p> <p>21 A. When you say retained, as of what</p> <p>22 date?</p> <p>23 Q. After June 30th, 2006.</p> <p>24 A. Mr. Nail was retained. Actually, as I</p> <p>25 indicated, as of June 30th everybody was retained</p>
<p style="text-align: right;">Page 63</p> <p>1 C. Freeman</p> <p>2 Ms. Jones, Mr. Zimmerman.</p> <p>3 Those are the ones I recall.</p> <p>4 Q. Were any PPI executives permanently</p> <p>5 retained as employees after the acquisition?</p> <p>6 A. None of us are permanent.</p> <p>7 Q. With the intention of continuing their</p> <p>8 employment indefinitely as opposed to a finite</p> <p>9 ending date.</p> <p>10 A. OK, you're going to have to restate</p> <p>11 that question. I'm lost.</p> <p>12 Q. Were any of the PPI executives -- was</p> <p>13 a decision made to retain any of the PPI</p> <p>14 executives in the employ of PPI after the</p> <p>15 acquisition?</p> <p>16 A. Those that were on employment</p> <p>17 agreements specifically?</p> <p>18 Q. Any PPI executives.</p> <p>19 A. How would you define an executive?</p> <p>20 Q. Well, let's start stick with the ones</p> <p>21 who had employment agreements then.</p> <p>22 A. Yes.</p> <p>23 Q. Which ones?</p> <p>24 A. Mr. Zimmerman was retained.</p> <p>25 Q. What was his position pre- and</p>	<p style="text-align: right;">Page 65</p> <p>1 C. Freeman</p> <p>2 because they were -- the, um, termination without</p> <p>3 cause provisions of their employment agreements</p> <p>4 had not yet been triggered.</p> <p>5 Q. When I say retained, I mean who was</p> <p>6 retained for the purpose of remaining actively</p> <p>7 employed and performing their duties?</p> <p>8 A. OK. I believe the list I just gave</p> <p>9 you, I believe that is a complete list.</p> <p>10 Q. Were any of the executives with</p> <p>11 contracts who were employed at the PPI</p> <p>12 headquarters in Charlotte retained other than</p> <p>13 Mr. Nail?</p> <p>14 A. No.</p> <p>15 Q. Were you involved in any discussions</p> <p>16 about whether the employment agreements of</p> <p>17 Mr. Nail and the other PPI executives would remain</p> <p>18 in effect after the acquisition?</p> <p>19 A. Yes.</p> <p>20 Q. Who were those discussions with?</p> <p>21 A. Mr. Kinzel.</p> <p>22 Q. What was discussed?</p> <p>23 A. What was discussed was I was given</p> <p>24 direction that we were to honor the employment</p> <p>25 agreements that were in place.</p>

17 (Pages 62 to 65)

<p style="text-align: right;">Page 66</p> <p>1 C. Freeman</p> <p>2 Q. Mr. Kinzel directed you to do that,</p> <p>3 correct?</p> <p>4 A. Yes.</p> <p>5 Q. What did you understand him to mean by</p> <p>6 honor the agreements?</p> <p>7 A. That we were to, um, abide by the</p> <p>8 terms and conditions of those agreements.</p> <p>9 Q. Prior to the closing date did you have</p> <p>10 any discussions with anyone at PPI or CBS</p> <p>11 regarding Mr. Nail's employment agreement</p> <p>12 specifically?</p> <p>13 A. No.</p> <p>14 Q. Did you have any discussions prior to</p> <p>15 closing with anyone at Cedar Fair regarding</p> <p>16 Mr. Nail's agreement specifically?</p> <p>17 A. No.</p> <p>18 Q. Was anyone present in your meeting or</p> <p>19 discussion with Mr. Kinzel when he said honor the</p> <p>20 agreements?</p> <p>21 A. I don't have specific recollection of</p> <p>22 who may or may not have been present.</p> <p>23 Q. Was there anything that you know of in</p> <p>24 writing regarding that meeting?</p> <p>25 A. Not that I know of.</p>	<p style="text-align: right;">Page 68</p> <p>1 C. Freeman</p> <p>2 A. No.</p> <p>3 Q. Had you discussed it with anyone?</p> <p>4 A. No.</p> <p>5 Q. Did you get a contract yourself?</p> <p>6 A. No.</p> <p>7 Q. Do you know of anybody who did?</p> <p>8 A. Yes.</p> <p>9 Q. Who?</p> <p>10 A. They're disclosed in the, um, public</p> <p>11 filings.</p> <p>12 Q. Do you know if those contracts contain</p> <p>13 any restrictions on postemployment activities?</p> <p>14 A. I don't know.</p> <p>15 Q. Who made the decision to retain</p> <p>16 Mr. Nail after the closing date?</p> <p>17 A. That would have been based on a</p> <p>18 discussion I would have had with Mr. Kinzel.</p> <p>19 Q. So did he make the decision or did</p> <p>20 you?</p> <p>21 A. I made the recommendation. He</p> <p>22 approved it.</p> <p>23 Q. When did that discussion take place?</p> <p>24 A. I don't know specifically. It would</p> <p>25 have been at or around the closing date.</p>
<p style="text-align: right;">Page 67</p> <p>1 C. Freeman</p> <p>2 Q. In 2006 was it Cedar Fair's practice</p> <p>3 to have written employment contracts with its</p> <p>4 higher level executives?</p> <p>5 A. To the best of my recollection in 2006</p> <p>6 we, um, the only employee under contract was</p> <p>7 Mr. Kinzel.</p> <p>8 Q. Did you have a written employment</p> <p>9 contract?</p> <p>10 A. Me personally?</p> <p>11 Q. Yes.</p> <p>12 A. No.</p> <p>13 Q. Were you aware of anyone other than</p> <p>14 Mr. Kinzel who had one?</p> <p>15 A. Not at that time.</p> <p>16 Q. Subsequently did it become Cedar</p> <p>17 Fair's practice to have written contracts?</p> <p>18 A. Yes.</p> <p>19 Q. When did that occur?</p> <p>20 A. I don't know exactly. I don't recall</p> <p>21 exactly.</p> <p>22 Q. Were you involved in that change of</p> <p>23 practice?</p> <p>24 A. No.</p> <p>25 Q. Do you know the reason for it?</p>	<p style="text-align: right;">Page 69</p> <p>1 C. Freeman</p> <p>2 Q. Was it after the closing date?</p> <p>3 A. I doubt it.</p> <p>4 Q. Do you recall what specifically was</p> <p>5 discussed?</p> <p>6 A. No.</p> <p>7 Q. Did you discuss the reasoning for your</p> <p>8 recommendation with Mr. Kinzel?</p> <p>9 A. My recommendation was based on the</p> <p>10 outstanding matters that we had to deal with that</p> <p>11 needed further attention.</p> <p>12 Q. Legal matters?</p> <p>13 A. Legal and human resource matters.</p> <p>14 Q. And legal matters were ongoing</p> <p>15 lawsuits and what not involving the company?</p> <p>16 A. Right.</p> <p>17 Q. And HR matters were letting go the</p> <p>18 remaining people in the Charlotte office?</p> <p>19 MS. KIRILA: Objection.</p> <p>20 A. Restructuring.</p> <p>21 Q. Restructuring?</p> <p>22 A. Yes.</p> <p>23 Q. What did the restructuring entail?</p> <p>24 MS. KIRILA: I am just going to object</p> <p>25 to the extent that you had discussions with</p>

18 (Pages 66 to 69)

<p style="text-align: right;">Page 70</p> <p>1 C. Freeman</p> <p>2 Mr. Nail in his capacity as general counsel</p> <p>3 about that, but you can testify generally.</p> <p>4 A. Generally we were looking at the</p> <p>5 organization structure and which positions would</p> <p>6 be retained and which positions would not and how</p> <p>7 the organization would be structured</p> <p>8 postacquisition.</p> <p>9 Q. Did Mr. Kinzel offer any view of your</p> <p>10 recommendation or did he just say, OK?</p> <p>11 A. I don't recall any specific, um,</p> <p>12 reaction.</p> <p>13 Q. Did he question you about it?</p> <p>14 A. I don't recall.</p> <p>15 Q. Did you tell him what your reasoning</p> <p>16 was for the recommendation?</p> <p>17 A. I'm sure I did.</p> <p>18 Q. Did your recommendation -- was your</p> <p>19 recommendation to retain him until such time as</p> <p>20 the outstanding matters were resolved or to retain</p> <p>21 him on an ongoing longer basis?</p> <p>22 A. My recommendation was to retain</p> <p>23 Mr. Nail until we could ascertain with greater</p> <p>24 certainty what the ongoing needs would be.</p> <p>25 Q. So you weren't sure?</p>	<p style="text-align: right;">Page 72</p> <p>1 C. Freeman</p> <p>2 to them the decision that they would be relieved</p> <p>3 of their duties effective the closing date?</p> <p>4 A. Mr. Kinzel called Mr. Weber and</p> <p>5 informed him.</p> <p>6 Q. Were you present?</p> <p>7 A. Yes.</p> <p>8 Q. What did you hear him say to</p> <p>9 Mr. Weber?</p> <p>10 A. He told Mr. Weber that effective</p> <p>11 immediately that those employees would be placed</p> <p>12 on administrative leave.</p> <p>13 Q. Did he use those words?</p> <p>14 A. I believe he did. That's my</p> <p>15 recollection.</p> <p>16 Q. He didn't tell Mr. Weber effective</p> <p>17 immediately those individuals' employment was</p> <p>18 terminated without cause?</p> <p>19 A. He did not use those words.</p> <p>20 Q. Was Mr. Weber on speakerphone?</p> <p>21 A. As I recall, yes.</p> <p>22 Q. And what did he respond to that?</p> <p>23 A. Basically in the affirmative, that he</p> <p>24 would -- he would take care of it.</p> <p>25 Q. He would take care of informing those</p>
<p style="text-align: right;">Page 71</p> <p>1 C. Freeman</p> <p>2 A. Not a hundred percent, no.</p> <p>3 Q. But it was not likely in your view at</p> <p>4 the time that he would remain actively employed</p> <p>5 for the remainder of his employment contract term,</p> <p>6 was it?</p> <p>7 MS. KIRILA: Object to form. Go</p> <p>8 ahead.</p> <p>9 A. I'm sorry. Could you ask the question</p> <p>10 again?</p> <p>11 Q. Sure. At the time was it your view</p> <p>12 that Mr. Nail would continue to be actively</p> <p>13 employed for the remainder of this employment</p> <p>14 contract term?</p> <p>15 A. Probably not.</p> <p>16 Q. Did you have any ballpark estimate of</p> <p>17 how long it would take for the outstanding matters</p> <p>18 to be resolved and Mr. Nail could be placed on</p> <p>19 administrative leave, as you called it, along with</p> <p>20 the rest of the individuals you listed?</p> <p>21 A. Not at that time.</p> <p>22 Q. So Mr. Kinzel did not -- strike that.</p> <p>23 Who communicated to the individuals you listed</p> <p>24 earlier, Mr. Al Weber, Fisher, Koontz, Thornton,</p> <p>25 Petit, Jones, Kaetzel and White? Who communicated</p>	<p style="text-align: right;">Page 73</p> <p>1 C. Freeman</p> <p>2 individuals?</p> <p>3 A. Yes.</p> <p>4 Q. Anything else?</p> <p>5 A. Not that I recall.</p> <p>6 Q. Did Mr. Kinzel inform Mr. Weber that</p> <p>7 Mr. Weber himself was also being immediately</p> <p>8 placed on administrative leave?</p> <p>9 A. I believe so.</p> <p>10 Q. What was Mr. Weber's reaction to that?</p> <p>11 A. He was professional and...</p> <p>12 Q. Was there any discussion regarding</p> <p>13 whether Mr. Weber and the other individuals</p> <p>14 continued to be paid under their contracts?</p> <p>15 A. I don't recall whether that was part</p> <p>16 of that conversation.</p> <p>17 Q. Do you recall anything else about that</p> <p>18 conversation?</p> <p>19 A. It was pretty brief.</p> <p>20 Q. Did you have any conversations with</p> <p>21 Mr. Kinzel immediately before or after that call</p> <p>22 to Mr. Weber?</p> <p>23 A. Just preparing for the call and --</p> <p>24 Q. What was said?</p> <p>25 A. I don't recall.</p>

19 (Pages 70 to 73)



<p style="text-align: right;">Page 74</p> <p>1 C. Freeman</p> <p>2 Q. Did Mr. Weber and those other</p> <p>3 individuals receive anything in writing regarding</p> <p>4 their status?</p> <p>5 A. With respect to the administrative</p> <p>6 leave?</p> <p>7 Q. Correct.</p> <p>8 A. Not that I recall.</p> <p>9 Q. So they weren't sent letters that said</p> <p>10 effective on such and such a date this will</p> <p>11 happen?</p> <p>12 A. Not that I recall.</p> <p>13 Q. They weren't provided any written</p> <p>14 notice of what was going to happen?</p> <p>15 MS. KIRILA: Objection.</p> <p>16 A. With respect to the administrative</p> <p>17 leave?</p> <p>18 Q. Correct.</p> <p>19 A. Not that I recall.</p> <p>20 Q. Do you know who would know whether</p> <p>21 they received such notice, written notice?</p> <p>22 A. Well, that notice probably would have</p> <p>23 come out of my office.</p> <p>24 Q. Would someone else in your office have</p> <p>25 access to that information?</p>	<p style="text-align: right;">Page 76</p> <p>1 C. Freeman</p> <p>2 marked for identification, this date.)</p> <p>3 Q. I show you what has been marked as</p> <p>4 Defendant's Exhibit A. Have you ever seen that</p> <p>5 before?</p> <p>6 A. Yes.</p> <p>7 Q. What is it?</p> <p>8 A. It's a memo that CBS sent to the PPI</p> <p>9 employees concurrent with the sale of Paramount</p> <p>10 Parks to Cedar Fair.</p> <p>11 Q. Did you have any input into this</p> <p>12 document?</p> <p>13 A. There was some communication between</p> <p>14 our counsel and CBS regarding this document and I</p> <p>15 don't know what level of input our counsel had</p> <p>16 with respect to this document.</p> <p>17 Q. I was asking if you personally had any</p> <p>18 input into it.</p> <p>19 A. Oh, me personally, OK. I don't recall</p> <p>20 having any input into this document.</p> <p>21 Q. If you look under the section entitled</p> <p>22 "Employment" on the first page, it states that</p> <p>23 "all active employees of Paramount Parks will</p> <p>24 remain employees of Paramount Parks, and/or its</p> <p>25 subsidiaries, i.e., your employer will not change</p>
<p style="text-align: right;">Page 75</p> <p>1 C. Freeman</p> <p>2 A. Yes, if I directed them to try and</p> <p>3 find it.</p> <p>4 Q. Would you be able to check or have</p> <p>5 someone check to see if those individuals were</p> <p>6 given written notice of administrative leave?</p> <p>7 Yes?</p> <p>8 A. Yes.</p> <p>9 Q. Who informed Mr. Nail that he was</p> <p>10 going to be retained after the closing date?</p> <p>11 A. I don't recall.</p> <p>12 Q. Did you?</p> <p>13 A. I may have. I don't recall a</p> <p>14 conversation.</p> <p>15 Q. Did you tell Mr. Nail that Mr. Kinzel</p> <p>16 had personally picked Mr. Nail as the one person</p> <p>17 to remain at the headquarters in Charlotte?</p> <p>18 A. I don't recall saying that.</p> <p>19 Q. You don't recall one way or the other?</p> <p>20 A. I don't recall one way or the other.</p> <p>21 MR. PAPPAS: Mark this as Defendant's</p> <p>22 Exhibit A.</p> <p>23 (Defendant's Exhibit A, memorandum</p> <p>24 dated June 30, 2006, re: "The Sale of</p> <p>25 Paramount Parks, Inc. to Cedar Fair, L.P."</p>	<p style="text-align: right;">Page 77</p> <p>1 C. Freeman</p> <p>2 as a result of the transaction."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Is that accurate?</p> <p>6 A. Yes.</p> <p>7 MS. KIRILA: I am just going to object</p> <p>8 to the extent that you're asking him for</p> <p>9 information on a document that he was not</p> <p>10 the author of.</p> <p>11 But you can testify as to your</p> <p>12 understanding as to what happened.</p> <p>13 Q. Is that what happened, all active</p> <p>14 employees of PPI remained employees of PPI and</p> <p>15 their employer did not change as a result of the</p> <p>16 transaction?</p> <p>17 A. That is correct.</p> <p>18 Q. As you stated earlier, Mr. Nail's</p> <p>19 employment contract with PPI remained in full</p> <p>20 effect after PPI was acquired by Cedar Fair,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. To your knowledge was Mr. Nail given</p> <p>24 any severance benefits from PPI or Cedar Fair?</p> <p>25 MS. KIRILA: Just object to the extent</p>

20 (Pages 74 to 77)

<p style="text-align: right;">Page 78</p> <p>1 C. Freeman</p> <p>2 it calls for a legal conclusion under his</p> <p>3 contract, but you can answer as to your</p> <p>4 understanding.</p> <p>5 Q. Was he given any payments denominated</p> <p>6 severance pay or separation pay?</p> <p>7 A. No, not to my knowledge.</p> <p>8 MR. PAPPAS: Mark this as B.</p> <p>9 (Defendant's Exhibit B, document</p> <p>10 purported to be Lester Nails' employment</p> <p>11 contract with PPI, Bates Nos. LES00038</p> <p>12 through 45, marked for identification, this</p> <p>13 date.)</p> <p>14 Q. I show you what has been marked as</p> <p>15 Defendant's Exhibit B. And this is Mr. Nail's</p> <p>16 employment contract with PPI, correct?</p> <p>17 A. It appears to be.</p> <p>18 Q. This is the contract that was in</p> <p>19 effect at the time of PPI's sale to Cedar Fair,</p> <p>20 right?</p> <p>21 A. Yes.</p> <p>22 Q. And this is the contract that remained</p> <p>23 in effect after that sale, correct?</p> <p>24 A. Yes.</p> <p>25 Q. According to this document Mr. Nail</p>	<p style="text-align: right;">Page 80</p> <p>1 C. Freeman</p> <p>2 corporation's general counsel does?</p> <p>3 A. Generally.</p> <p>4 Q. And were Mr. Nail's duties as general</p> <p>5 counsel of PPI consistent with your own general</p> <p>6 understanding of what a general counsel does?</p> <p>7 A. As a subsidiary of a larger publicly</p> <p>8 traded company, there would -- I don't believe</p> <p>9 there would have been the SEC, you know, issues</p> <p>10 involved in the position and perhaps some of the</p> <p>11 corporate governance, so forth, that a general</p> <p>12 counsel for a publicly traded entity would have.</p> <p>13 Q. Any other differences?</p> <p>14 A. Not that come to mind.</p> <p>15 Q. When Cedar Fair acquired PPI on</p> <p>16 June 30, 2006, were any of the incumbent PPI</p> <p>17 executives who had employment contracts</p> <p>18 discharged?</p> <p>19 A. On June 30th?</p> <p>20 Q. After, on or after June 30th.</p> <p>21 A. On or after June 30th. Yes,</p> <p>22 subsequently the termination without cause</p> <p>23 provisions of those employment agreements for</p> <p>24 several of the executives were triggered.</p> <p>25 Q. Who were they triggered for and when?</p>
<p style="text-align: right;">Page 79</p> <p>1 C. Freeman</p> <p>2 was employed by PPI as senior vice president</p> <p>3 general counsel.</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Is that consistent with your</p> <p>7 understanding of the position that he actually</p> <p>8 held at PPI?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know what Mr. Nail's duties as</p> <p>11 senior vice president general counsel at PPI were</p> <p>12 prior to the sale?</p> <p>13 A. Generally.</p> <p>14 Q. How did you know?</p> <p>15 A. From meetings with Mr. Nail.</p> <p>16 Q. What was your understanding of his</p> <p>17 duties and responsibilities?</p> <p>18 A. He was responsible for administering</p> <p>19 the legal function for PPI.</p> <p>20 Q. What does that entail?</p> <p>21 A. Contracts, litigation, employment</p> <p>22 matters, various legal matters relating to the</p> <p>23 company.</p> <p>24 Q. Based on your own experience do you</p> <p>25 have any knowledge generally about what a</p>	<p style="text-align: right;">Page 81</p> <p>1 C. Freeman</p> <p>2 A. Mr. Weber, Mr. Fisher, Mr. Koontz,</p> <p>3 Ms. Jones, Mr. Kaetzel, Mr. White, Mr. Petit,</p> <p>4 and --</p> <p>5 Q. Mr. Thornton?</p> <p>6 A. Mr. Thornton. And Mr. Nail.</p> <p>7 Q. Other than Mr. Nail those were the</p> <p>8 same individuals that you earlier testified were</p> <p>9 placed on administrative leave after the closing</p> <p>10 date, correct?</p> <p>11 A. Yes.</p> <p>12 Q. When was their status changed from</p> <p>13 administrative leave to termination without cause?</p> <p>14 A. They were sent a letter in late July.</p> <p>15 Q. Late July of 2006, correct?</p> <p>16 A. Yes.</p> <p>17 Q. Do you still have copies of those?</p> <p>18 A. Yes.</p> <p>19 Q. Do you remember what they said?</p> <p>20 A. They were drafted by counsel to comply</p> <p>21 with the terms of the individual employment</p> <p>22 agreements.</p> <p>23 Q. I am just asking if you remember what</p> <p>24 they said.</p> <p>25 MS. KIRILA: I am just going to object</p>

21 (Pages 78 to 81)

<p style="text-align: right;">Page 82</p> <p>1 C. Freeman</p> <p>2 to the extent that you need to refer to a</p> <p>3 document that's the best evidence. You can</p> <p>4 testify as to your general memory.</p> <p>5 A. My general recollection is that we</p> <p>6 were notifying them that effective, I believe it</p> <p>7 was August 1st, that their services were no longer</p> <p>8 required and we would be triggering the</p> <p>9 termination without cause provision of their</p> <p>10 employment agreement and that their employment</p> <p>11 agreements would remain intact and their</p> <p>12 obligations continued.</p> <p>13 Q. In between June 20, 2006, and the time</p> <p>14 these individuals were notified by letter that</p> <p>15 they were being terminated without cause, did any</p> <p>16 of them perform any services for PPI or Cedar</p> <p>17 Fair?</p> <p>18 A. Other than Mr. Nail, I'm not aware of</p> <p>19 any.</p> <p>20 Q. Were any of them asked to perform</p> <p>21 services for PPI or Cedar Fair during that period?</p> <p>22 A. Other than Mr. Nail, no, I don't know.</p> <p>23 Q. You don't know?</p> <p>24 Do you know who decided to terminate</p> <p>25 those individuals without cause?</p>	<p style="text-align: right;">Page 84</p> <p>1 C. Freeman</p> <p>2 recollection and impression and it would be that,</p> <p>3 you know, the closing date had occurred. The dust</p> <p>4 had settled a little bit and it was time to move</p> <p>5 on and basically bring it to closure and we had</p> <p>6 made the, a lot of the restructuring decisions and</p> <p>7 we were comfortable that at that time we did not</p> <p>8 require the services of those individuals.</p> <p>9 Q. As you've already testified, Mr. Nail</p> <p>10 was asked to stay on for a period of time after</p> <p>11 the closing date, correct?</p> <p>12 A. Yes.</p> <p>13 Q. And that final decision was made by</p> <p>14 Mr. Kinzel upon your recommendation according to</p> <p>15 your testimony, right?</p> <p>16 A. To retain him?</p> <p>17 Q. Yes.</p> <p>18 A. Yes.</p> <p>19 Q. Didn't you tell Mr. Nail that</p> <p>20 Mr. Kinzel had personally picked Mr. Nail to stay</p> <p>21 and help close the corporate office?</p> <p>22 MS. KIRILA: Objection. Asked and</p> <p>23 answered.</p> <p>24 MR. PAPPAS: I apologize if I already</p> <p>25 asked it.</p>
<p style="text-align: right;">Page 83</p> <p>1 C. Freeman</p> <p>2 A. That would have been Mr. Kinzel.</p> <p>3 Q. Do you know why he decided to do that</p> <p>4 at that time?</p> <p>5 A. I'm trying to recall a specific</p> <p>6 conversation or discussion and rational reasoning.</p> <p>7 I just don't recall specifics.</p> <p>8 Q. But you did have discussions with him</p> <p>9 about that, correct?</p> <p>10 A. I'm sure I did.</p> <p>11 Q. But you don't recall anything that was</p> <p>12 discussed in those conversations?</p> <p>13 A. Not specifically.</p> <p>14 Q. Generally?</p> <p>15 A. Generally it was to proceed with the</p> <p>16 termination without cause, under the employment</p> <p>17 agreements that we would continue to honor those</p> <p>18 agreements as I indicated previously.</p> <p>19 Q. Anything else?</p> <p>20 A. Not specifically, no.</p> <p>21 Q. Do you have any idea why it was</p> <p>22 decided at that time to convert these individuals</p> <p>23 from administrative leave to termination without</p> <p>24 cause? In other words, why that?</p> <p>25 A. You've asked for my general</p>	<p style="text-align: right;">Page 85</p> <p>1 C. Freeman</p> <p>2 MS. KIRILA: You can answer again.</p> <p>3 A. My recollection is that since Mr. Nail</p> <p>4 was going to be the only remaining senior</p> <p>5 executive on staff and on the ground in Charlotte,</p> <p>6 that he was going to be designated, if you will,</p> <p>7 as the in-charge person and that yes, Mr. Kinzel</p> <p>8 did direct that.</p> <p>9 Q. Did you tell Mr. Nail that all of the</p> <p>10 other incumbent PPI officers had been sent home?</p> <p>11 A. I have a vague recollection of that</p> <p>12 conversation.</p> <p>13 Q. Do you know who communicated to</p> <p>14 Mr. Nail the fact that the company wanted him to</p> <p>15 stay on for a period of time after the closing</p> <p>16 date?</p> <p>17 A. That would have been -- I am sure that</p> <p>18 might have been me.</p> <p>19 Q. Do you recall anything about that</p> <p>20 discussion?</p> <p>21 A. No.</p> <p>22 Q. Do you recall when it took place?</p> <p>23 A. No.</p> <p>24 Q. Was it prior or subsequent to the</p> <p>25 closing date?</p>

22 (Pages 82 to 85)

<p style="text-align: right;">Page 86</p> <p>1 C. Freeman</p> <p>2 A. I don't recall.</p> <p>3 Q. Was it in person, on the phone or by</p> <p>4 e-mail?</p> <p>5 A. My recollection is it would have been</p> <p>6 a telephone conversation, but that's just my</p> <p>7 recollection.</p> <p>8 Q. Do you recall generally anything that</p> <p>9 either you or he said in that conversation?</p> <p>10 A. No.</p> <p>11 Q. But you know that you informed him</p> <p>12 that the company wanted him to stay on for a</p> <p>13 period of time to help close the corporate office,</p> <p>14 correct?</p> <p>15 A. I'm sure I did. To help close the</p> <p>16 corporate office part of that, what you just said,</p> <p>17 I'm not sure about, but I'm sure we had a</p> <p>18 conversation about him staying on and assuming a</p> <p>19 leadership role.</p> <p>20 Q. Was there any discussion in that</p> <p>21 conversation about how long he was being asked to</p> <p>22 stay on?</p> <p>23 A. I don't recall.</p> <p>24 Q. Was there any discussion about the</p> <p>25 fact that although he was being asked to stay on</p>	<p style="text-align: right;">Page 88</p> <p>1 C. Freeman</p> <p>2 work?</p> <p>3 A. Approximately, I guess until</p> <p>4 approximately the 27th.</p> <p>5 Q. July 27th, 2006?</p> <p>6 A. Yes, that was the date of the letter.</p> <p>7 Q. Sorry, I just need a yes. That was</p> <p>8 July 27, 2006?</p> <p>9 A. You said approximately, so yes.</p> <p>10 Q. Do you know what work he was</p> <p>11 performing during that time period?</p> <p>12 A. He was advising me with regard to some</p> <p>13 employment matters with respect to the</p> <p>14 restructuring and assisting me, ongoing -- he had</p> <p>15 some involvement in some ongoing PPI legal</p> <p>16 matters, some administrative duties with respect</p> <p>17 to the corporate offices and the staff on location</p> <p>18 there.</p> <p>19 Q. Anything else?</p> <p>20 A. That's all I recall.</p> <p>21 Q. Did Mr. Nail do everything that was</p> <p>22 asked of him during that time period?</p> <p>23 A. Yes.</p> <p>24 Q. Did he ever refuse to perform any</p> <p>25 services during that time period?</p>
<p style="text-align: right;">Page 87</p> <p>1 C. Freeman</p> <p>2 it would not be on a permanent basis?</p> <p>3 A. I don't recall. I know that there</p> <p>4 were several times where Mr. Nail asked me about</p> <p>5 his status.</p> <p>6 Q. And what was your response?</p> <p>7 A. I couldn't -- I couldn't give him any</p> <p>8 information.</p> <p>9 Q. You didn't know or you didn't --</p> <p>10 didn't want to give him that information?</p> <p>11 A. It was a, um, as it was an evolving</p> <p>12 situation wherein Mr. Nail's status was, as I</p> <p>13 indicated previously, you know, it was</p> <p>14 undetermined at one point and then by July 27th it</p> <p>15 became determined as we sorted things out.</p> <p>16 So, you know, there were points in</p> <p>17 time where I didn't know. There were points in</p> <p>18 time where I knew, but I couldn't say.</p> <p>19 Q. At least in the initial conversation</p> <p>20 you had with him where you informed him that he</p> <p>21 was being asked to stay for a period of time, you</p> <p>22 weren't sure at that point how long that would be.</p> <p>23 A. Right.</p> <p>24 Q. Approximately how long after the</p> <p>25 closing date did Mr. Nail remain at PPI performing</p>	<p style="text-align: right;">Page 89</p> <p>1 C. Freeman</p> <p>2 A. No.</p> <p>3 Q. Did he finish all the work that he had</p> <p>4 been asked to perform during the transition?</p> <p>5 A. The work that could be completed.</p> <p>6 Q. So everything he could complete he did</p> <p>7 complete?</p> <p>8 A. To the best of my recollection.</p> <p>9 Q. As you started to testify about</p> <p>10 before, there came a time when it was decided that</p> <p>11 Mr. Nail's services were no longer needed,</p> <p>12 correct?</p> <p>13 A. Yes.</p> <p>14 Q. When did that time come?</p> <p>15 A. Mid to late July.</p> <p>16 Q. Of 2006?</p> <p>17 A. Yes.</p> <p>18 Q. Who determined that Mr. Nail's</p> <p>19 services were no longer needed?</p> <p>20 A. I did.</p> <p>21 Q. Did you communicate that conclusion to</p> <p>22 anyone?</p> <p>23 A. Mr. Kinzel.</p> <p>24 Q. Anyone else?</p> <p>25 A. Not that I recall.</p>

23 (Pages 86 to 89)

<p style="text-align: right;">Page 90</p> <p>1 C. Freeman</p> <p>2 Q. What was discussed with Mr. Kinzel</p> <p>3 regarding that?</p> <p>4 A. I don't recall specific discussion</p> <p>5 topics.</p> <p>6 Q. Do you recall what the general</p> <p>7 exchange was between you and Mr. Kinzel regarding</p> <p>8 that topic?</p> <p>9 A. Generally it was that we could absorb</p> <p>10 or we would plan to absorb the PPI legal functions</p> <p>11 into the corporate staff and at that time we would</p> <p>12 not need Mr. Nail's services.</p> <p>13 Q. Did you say that to Mr. Kinzel or did</p> <p>14 he say that to you?</p> <p>15 A. My recollection is I said that to</p> <p>16 Mr. Kinzel.</p> <p>17 Q. And was he in agreement with that?</p> <p>18 A. Yes.</p> <p>19 Q. When you say that the company was</p> <p>20 going to absorb PPI's legal function into</p> <p>21 corporate staff, what does that mean?</p> <p>22 A. That the contracts, the litigation,</p> <p>23 the responsibilities that Mr. Nail was responsible</p> <p>24 for would be absorbed by my staff. We -- even at</p> <p>25 the time we were contemplating and made an offer</p>	<p style="text-align: right;">Page 92</p> <p>1 C. Freeman</p> <p>2 and receive one of those letters, correct?</p> <p>3 A. Correct.</p> <p>4 Q. Do you know who first communicated to</p> <p>5 Mr. Nail that the company would no longer be</p> <p>6 needing him to perform services?</p> <p>7 A. I'm sure it was me.</p> <p>8 Q. Do you remember when that was?</p> <p>9 A. No.</p> <p>10 Q. Sometime in July 2006 though, correct?</p> <p>11 A. On or about the date of that letter.</p> <p>12 Q. Do you remember anything about that</p> <p>13 conversation?</p> <p>14 A. No.</p> <p>15 Q. Do you recall generally what was said?</p> <p>16 A. I don't know -- I don't even recall</p> <p>17 the specific conversation.</p> <p>18 Q. Other than you know it took place.</p> <p>19 A. I mean, I -- I don't recall the</p> <p>20 conversation. I'm not saying it didn't take</p> <p>21 place, but I just don't recall it.</p> <p>22 Q. Somebody informed Mr. Nail prior to</p> <p>23 sending out the July 27th letter what his status</p> <p>24 was, correct?</p> <p>25 MS. KIRILA: Objection. Calls for</p>
<p style="text-align: right;">Page 91</p> <p>1 C. Freeman</p> <p>2 to the paralegal that reported to Mr. Nail to</p> <p>3 relocate to Sandusky and become a part of my</p> <p>4 staff.</p> <p>5 Q. To the extent that there was work that</p> <p>6 needed to be performed by an attorney who would be</p> <p>7 doing that?</p> <p>8 A. We would outsource.</p> <p>9 Q. Outside counsel?</p> <p>10 A. Yes. Which was Cedar Fair's practice.</p> <p>11 Q. And Mr. Kinzel was on board with that</p> <p>12 plan?</p> <p>13 A. Yes.</p> <p>14 Q. Do you recall anything specifically</p> <p>15 that he said to you in that conversation?</p> <p>16 A. No.</p> <p>17 Q. Was there any discussion regarding</p> <p>18 what would happen to Mr. Nail now that his</p> <p>19 services were no longer needed?</p> <p>20 A. It was within the context of the</p> <p>21 triggering of the termination without cause</p> <p>22 provisions of all of the group of executives.</p> <p>23 Q. So it was discussed that along with</p> <p>24 the other people you testified about before</p> <p>25 Mr. Nail would also be terminated without cause</p>	<p style="text-align: right;">Page 93</p> <p>1 C. Freeman</p> <p>2 speculation. You can testify.</p> <p>3 Q. Do you know?</p> <p>4 A. I don't know.</p> <p>5 Q. Is that something that you would have</p> <p>6 done given your ongoing dealings with Mr. Nail?</p> <p>7 MR. KIRILA: Objection to form of the</p> <p>8 question. Done as in notifying him of</p> <p>9 termination or before the letter?</p> <p>10 If you break the question down, you</p> <p>11 can answer.</p> <p>12 Q. Would verbally communicating with</p> <p>13 Mr. Nail that his services would no longer be</p> <p>14 needed be anything that you likely would have done</p> <p>15 given your ongoing dealings with him?</p> <p>16 A. Yes.</p> <p>17 Q. And you're not aware that anybody else</p> <p>18 did that?</p> <p>19 A. I am not.</p> <p>20 Q. Did you call Mr. Nail and tell him</p> <p>21 Mr. Kinzel said he could go home?</p> <p>22 A. I don't remember that conversation</p> <p>23 either.</p> <p>24 Q. You don't remember one way or the</p> <p>25 other?</p>

24 (Pages 90 to 93)



<p style="text-align: right;">Page 94</p> <p>1 C. Freeman</p> <p>2 A. I don't remember one way or the other.</p> <p>3 Q. Did you ever tell Mr. Nail either in</p> <p>4 words or substance that you were just the</p> <p>5 messenger and that Mr. Kinzel makes all of the</p> <p>6 decisions?</p> <p>7 A. I don't recall one way or the other on</p> <p>8 that one either.</p> <p>9 MR. PAPPAS: Take a short break.</p> <p>10 (A recess was taken from 11:30 a.m. to</p> <p>11 11:48 a.m.)</p> <p>12 MR. PAPPAS: Let's mark this as</p> <p>13 Defendant's Exhibit C.</p> <p>14 (Defendant's Exhibit C, letter from</p> <p>15 Richard Kinzel to Lester Nail dated July 27,</p> <p>16 2006, marked for identification, this date.)</p> <p>17 BY MR. PAPPAS:</p> <p>18 Q. I show you what has been marked as</p> <p>19 Defendant's Exhibit C, which is a letter from</p> <p>20 Richard Kinzel to Mr. Nail dated July 27, 2006,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. You have seen this before, right?</p> <p>24 A. Yes.</p> <p>25 Q. And is that Mr. Kinzel's signature at</p>	<p style="text-align: right;">Page 96</p> <p>1 C. Freeman</p> <p>2 A. The letters were written specifically</p> <p>3 to address specifically contracts, specific</p> <p>4 contracts as we discussed earlier. There were</p> <p>5 different contract forms, so there may have been</p> <p>6 some slight differences.</p> <p>7 Q. Do you know whether Mr. Kinzel knew</p> <p>8 what this letter said before he signed it?</p> <p>9 MS. KIRILA: Objection. Speculation.</p> <p>10 If you can testify --</p> <p>11 Q. If you know.</p> <p>12 MS. KIRILA: -- based on your</p> <p>13 observations.</p> <p>14 A. Generally, yes.</p> <p>15 Q. Did you discuss this letter with</p> <p>16 Mr. Kinzel before it was sent out?</p> <p>17 A. Not in detail.</p> <p>18 Q. Did you discuss it generally?</p> <p>19 A. Within the context of sending out all</p> <p>20 of the letters, yes.</p> <p>21 Q. What was discussed?</p> <p>22 A. That we were invoking the termination</p> <p>23 without cause provisions of the employment</p> <p>24 agreements for these contract employees that were</p> <p>25 being terminated without cause.</p>
<p style="text-align: right;">Page 95</p> <p>1 C. Freeman</p> <p>2 the bottom?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know who wrote this letter?</p> <p>5 A. Counsel. Outside counsel.</p> <p>6 Q. Mr. Kinzel didn't write it.</p> <p>7 A. No.</p> <p>8 Q. Do you know if Mr. Kinzel reviewed</p> <p>9 this letter before he signed it?</p> <p>10 A. I handed Mr. Kinzel a stack of these</p> <p>11 and he signed them all at the same time.</p> <p>12 Q. Do you know if he reviewed it before</p> <p>13 he signed it?</p> <p>14 A. I don't know if he reviewed this</p> <p>15 specific letter.</p> <p>16 Q. Did he review drafts?</p> <p>17 A. No.</p> <p>18 Q. Do you know if he reviewed any of the</p> <p>19 other letters that you handed him before he signed</p> <p>20 those?</p> <p>21 A. My recollection is that he reviewed</p> <p>22 them and he reviewed in general what I was handing</p> <p>23 him.</p> <p>24 Q. Were all the letters the same as this</p> <p>25 one?</p>	<p style="text-align: right;">Page 97</p> <p>1 C. Freeman</p> <p>2 Q. Anything else?</p> <p>3 A. Not that I recall.</p> <p>4 Q. Did you discuss this letter with</p> <p>5 anyone other than Mr. Kinzel before it was sent</p> <p>6 out?</p> <p>7 A. Counsel, outside counsel.</p> <p>8 Q. Did you review this letter before it</p> <p>9 was sent out?</p> <p>10 A. Yes.</p> <p>11 Q. And this letter was actually sent to</p> <p>12 Mr. Nail, correct?</p> <p>13 A. Yes.</p> <p>14 MR. PAPPAS: Mark this as Exhibit D.</p> <p>15 (Defendant's Exhibit D, one-page</p> <p>16 document entitled "Personnel Action Request</p> <p>17 Form," Bates Nos. PPI000014, marked for</p> <p>18 identification, this date.)</p> <p>19 Q. I show you what has been marked as</p> <p>20 Defendant's Exhibit D.</p> <p>21 Do you recognize this?</p> <p>22 A. No.</p> <p>23 Q. Do you know what it is?</p> <p>24 A. I know what it says. It's not a form</p> <p>25 I'm familiar with.</p>

25 (Pages 94 to 97)

<p style="text-align: right;">Page 134</p> <p>1 C. Freeman</p> <p>2 or questions regarding the form, Mr. Nail could</p> <p>3 have contacted Sandy Cranford.</p> <p>4 Q. Did you ever tell Mr. Nail not to</p> <p>5 return this form even if he was even eligible for</p> <p>6 benefits somewhere else?</p> <p>7 Did you ever tell him that?</p> <p>8 A. I never told him that.</p> <p>9 Q. Do you know if anyone at PPI told him</p> <p>10 that?</p> <p>11 A. I don't know.</p> <p>12 Q. Did you personally ever tell Mr. Nail</p> <p>13 not to return this form if he was working</p> <p>14 somewhere else?</p> <p>15 A. No.</p> <p>16 Q. Did anyone at PPI tell him that to</p> <p>17 your knowledge?</p> <p>18 A. No.</p> <p>19 Q. Going back to paragraph 25 of the</p> <p>20 court complaint, it alleges that in mid-October</p> <p>21 2007 PPI learned from another employee that</p> <p>22 defendant was working full time at Denny's, Inc.</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Who is the employee who informed PPI</p>	<p style="text-align: right;">Page 136</p> <p>1 C. Freeman</p> <p>2 A. I don't recall specifically what I</p> <p>3 said.</p> <p>4 Q. Do you recall generally?</p> <p>5 A. I expressed, I guess I expressed</p> <p>6 surprise and asked him if he was sure and...</p> <p>7 Q. Have you completed your answer?</p> <p>8 A. Yes.</p> <p>9 Q. Did Mr. Rein give you any other</p> <p>10 information other than he ran into Lester at the</p> <p>11 airport and he was working at Denny's?</p> <p>12 A. Not that I recall.</p> <p>13 Q. Did he tell you what Lester was doing</p> <p>14 at Denny's?</p> <p>15 A. Not that I recall.</p> <p>16 Q. This is the first time you had heard</p> <p>17 of it?</p> <p>18 A. Yes.</p> <p>19 Q. What did you do after you heard this?</p> <p>20 A. I contacted our -- because I knew this</p> <p>21 was a breach of the employment agreement, I</p> <p>22 contacted our payroll department and told them to</p> <p>23 immediately, and I knew the following day was a</p> <p>24 payday. I told them to immediately stop payment</p> <p>25 to Mr. Nail.</p>
<p style="text-align: right;">Page 135</p> <p>1 C. Freeman</p> <p>2 that defendant was working full time at Denny's?</p> <p>3 A. Jim Rein.</p> <p>4 Q. Jim Ryan?</p> <p>5 A. Rein, R-e-i-n.</p> <p>6 Q. Who is he?</p> <p>7 A. He is our vice president of</p> <p>8 information technology.</p> <p>9 Q. Who did he inform?</p> <p>10 A. Me.</p> <p>11 Q. What did he say?</p> <p>12 A. He said he ran into Lester at the</p> <p>13 Charlotte airport and Lester was working for</p> <p>14 Denny's.</p> <p>15 Q. Was this a passing conversation or did</p> <p>16 he come specifically to tell you that?</p> <p>17 A. It was a passing conversation.</p> <p>18 Q. What did you say in response?</p> <p>19 A. I was surprised.</p> <p>20 Q. You said that?</p> <p>21 A. I said that? What did I say?</p> <p>22 Q. I am just asking what you said in</p> <p>23 response.</p> <p>24 A. I don't recall.</p> <p>25 Q. If anything.</p>	<p style="text-align: right;">Page 137</p> <p>1 C. Freeman</p> <p>2 Q. Who specifically did you speak to in</p> <p>3 payroll?</p> <p>4 A. Debbie Thompson, our payroll manager.</p> <p>5 Q. Was that done?</p> <p>6 A. Yes.</p> <p>7 Q. Who else -- strike that. What did you</p> <p>8 do then?</p> <p>9 A. I drafted a letter to Mr. Nail</p> <p>10 notifying him that, basically notifying him what</p> <p>11 was happening. I probably drafted it with</p> <p>12 counsel.</p> <p>13 Q. You didn't inform Mr. Kinzel or</p> <p>14 Mr. Crage about the circumstances?</p> <p>15 A. Oh, yes, of course.</p> <p>16 Q. Did you do that before or after you</p> <p>17 contacted the payroll department?</p> <p>18 A. Before.</p> <p>19 Q. Did you speak to both of them together</p> <p>20 or separately?</p> <p>21 A. Together.</p> <p>22 Q. And what was discussed?</p> <p>23 A. Just that this, Lester had a job and</p> <p>24 another position that violated his employment</p> <p>25 agreement and we needed to cut him off</p>

35 (Pages 134 to 137)

<p style="text-align: right;">Page 138</p> <p>1 C. Freeman</p> <p>2 immediately.</p> <p>3 Q. You said that to them?</p> <p>4 A. That was the gist of the conversation.</p> <p>5 And then they agreed.</p> <p>6 Q. Do you recall anything specifically</p> <p>7 that either of them said in that conversation?</p> <p>8 A. No.</p> <p>9 Q. Who proposed cutting off his pay</p> <p>10 immediately?</p> <p>11 A. I mean, that was my first thought. So</p> <p>12 I guess it was me.</p> <p>13 Q. Did you have the authority to do that</p> <p>14 without approval from Mr. Kinzel?</p> <p>15 A. I think I would have done it and told</p> <p>16 him I did it.</p> <p>17 Q. Told him after it was done.</p> <p>18 A. Yes. That's not what happened, but, I</p> <p>19 mean, I'm speculating. Would I have or could I</p> <p>20 have done it? Yes, I think so.</p> <p>21 Q. You proposed this to Mr. Kinzel and</p> <p>22 Mr. Cragg and they said go ahead?</p> <p>23 A. Yes.</p> <p>24 Q. What else --</p> <p>25 A. That's the gist of the conversation.</p>	<p style="text-align: right;">Page 140</p> <p>1 C. Freeman</p> <p>2 meeting were recorded in the minutes, correct?</p> <p>3 A. The minutes are not very detailed.</p> <p>4 They are very bulleted, and, um, it may -- things</p> <p>5 may or may not be in there depending on the</p> <p>6 context or the level of detail or, you know,</p> <p>7 whether it rose to, rose to a level that needed</p> <p>8 follow-up or continuing discussion or anything</p> <p>9 like that, or action.</p> <p>10 Q. As you sit here today do you recall</p> <p>11 whether that issue was mentioned in the staff</p> <p>12 meeting minutes?</p> <p>13 A. I don't recall.</p> <p>14 Q. Do you still have those minutes?</p> <p>15 A. I probably do.</p> <p>16 Q. Before you cut off Mr. Nail's pay did</p> <p>17 you take any steps to confirm whether he was</p> <p>18 employed at Denny's?</p> <p>19 A. No.</p> <p>20 Q. Did you ever take any steps to contact</p> <p>21 Denny's to confirm that he was employed there?</p> <p>22 A. Not until the lawsuit was active and I</p> <p>23 guess -- I don't -- I don't recall. I'm trying to</p> <p>24 think of the sequence of events here.</p> <p>25 I don't recall ever contacting</p>
<p style="text-align: right;">Page 139</p> <p>1 C. Freeman</p> <p>2 Q. What else was discussed in that</p> <p>3 conversation?</p> <p>4 A. I don't recall.</p> <p>5 Q. Was there any talk of suing Mr. Nail</p> <p>6 in that conversation?</p> <p>7 A. Not in that conversation. I don't</p> <p>8 think in that conversation, no.</p> <p>9 Q. Do you recall anything else at all</p> <p>10 about that conversation?</p> <p>11 A. No.</p> <p>12 Q. Was anyone else present other than the</p> <p>13 three of you?</p> <p>14 A. Yes.</p> <p>15 Q. Who?</p> <p>16 A. It occurred in the staff meeting, so</p> <p>17 we had other members of Mr. Kinzel's staff were</p> <p>18 present.</p> <p>19 Q. So it would have been mentioned then</p> <p>20 in the minutes and notes of the staff meeting?</p> <p>21 MS. KIRILA: Objection. Go ahead.</p> <p>22 A. It may be there. It may not. I don't</p> <p>23 know.</p> <p>24 Q. Generally things that were</p> <p>25 discussed -- well, substantive things in the staff</p>	<p style="text-align: right;">Page 141</p> <p>1 C. Freeman</p> <p>2 Denny's. I mean, through discovery we may have</p> <p>3 gotten some information with regard to his</p> <p>4 employment at Denny's, but I don't know that we</p> <p>5 ever directly contacted Denny's.</p> <p>6 Q. So all you knew at the time that you</p> <p>7 directed that his pay be cut off was that he was</p> <p>8 working at Denny's, somebody told you.</p> <p>9 A. Right.</p> <p>10 Q. So after your conversation with</p> <p>11 Mr. Kinzel and Mr. Cragg it was then that you</p> <p>12 contacted Debbie Thompson to immediately stop</p> <p>13 payment to Mr. Nail; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. How soon after that meeting did you</p> <p>16 contact payroll?</p> <p>17 A. Within a couple of hours.</p> <p>18 Q. And then you said you with the</p> <p>19 assistance of counsel drafted a letter to</p> <p>20 Mr. Nail; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. Was that your idea or someone else's?</p> <p>23 A. I don't recall.</p> <p>24 Q. Was it discussed, the possibility of</p> <p>25 sending him a letter, was that discussed in your</p>

36 (Pages 138 to 141)



Page 142

1 C. Freeman  
 2 meeting with Mr. Kinzel and Mr. Crage?  
 3 A. No.  
 4 MR. PAPPAS: Mark this as Exhibit I.  
 5 (Defendant's Exhibit I, letter to  
 6 Lester Nail from Craig Freeman, dated  
 7 October 19, 2007, Bates No. LES0018, marked  
 8 for identification, this date.)  
 9 (A luncheon recess was taken at  
 10 12:56 p.m.)  
 11  
 12  
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 14  
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 16  
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 18  
 19  
 20  
 21  
 22  
 23  
 24  
 25

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1 C. Freeman  
 2 AFTERNOON SESSION.  
 3 (Time noted: 1:48 p.m.)  
 4 CRAIG FREEMAN, resumed and testified  
 5 further as follows:  
 6 EXAMINATION BY (Cont'd.)  
 7 MR. PAPPAS:  
 8 Q. Do you have Exhibit I in front of you?  
 9 A. Yes.  
 10 Q. I show you what has been marked as  
 11 Exhibit I. And you sent this letter to Mr. Nail  
 12 on or about October 19, 2007; is that correct?  
 13 A. Yes.  
 14 Q. Did you write it?  
 15 A. It was drafted by counsel. And I  
 16 forgot to mention that the day before following  
 17 that meeting I contacted counsel immediately and  
 18 started consulting with counsel on this matter.  
 19 So this letter was part of that.  
 20 Q. Following the meeting with Mr. Kinzel  
 21 and Mr. Crage?  
 22 A. Yes.  
 23 Q. Did you make any revisions to this  
 24 letter?  
 25 A. Not that I recall.

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1 C. Freeman  
 2 Q. And you reviewed it before you signed  
 3 it and sent it out, correct?  
 4 A. Yes.  
 5 Q. Did you discuss the letter with anyone  
 6 other than counsel?  
 7 A. Not that I recall.  
 8 Q. That's your signature, correct?  
 9 A. Yes.  
 10 Q. Did anyone other than you have to  
 11 approve of this letter before it was sent?  
 12 A. No.  
 13 Q. Do you know whether Kinzel or Crage  
 14 ever reviewed the letter before it was sent?  
 15 A. No, they didn't.  
 16 Q. You know that they did not?  
 17 A. I know that they did not.  
 18 Q. How do you know that?  
 19 A. My recollection is that I worked with  
 20 counsel on drafting and finalizing it and sending  
 21 it out and I would not have involved Mr. Kinzel  
 22 and Mr. Crage in that.  
 23 Q. Why not?  
 24 A. Because it was pursuant to the  
 25 conversations we had had the day before.

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1 C. Freeman  
 2 Q. They knew the letter was going out  
 3 though, didn't they?  
 4 MS. KIRILA: Objection. Calls for  
 5 speculation, but you can testify.  
 6 Q. Do you know if they knew that the  
 7 letter such as this was being sent?  
 8 A. I don't have a specific recollection  
 9 of discussing it with either one of them.  
 10 Q. Who made the decision to stop paying  
 11 Mr. Nail under his employment agreement?  
 12 A. As I indicated previously, that was my  
 13 immediate thought and Mr. Kinzel was on board with  
 14 that.  
 15 Q. When did PPI stop making payments to  
 16 Mr. Nail?  
 17 A. Effective with my October 18th call to  
 18 Debbie Thompson.  
 19 Q. So he received all payments through  
 20 October 18th?  
 21 A. All payments that were, that would  
 22 have been due up to October 18th would have been  
 23 made.  
 24 Q. Were any of those payments  
 25 subsequently taken out of his bank account via

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1 C. Freeman

2 direct deposit?

3 A. None of those payments were.

4 Q. Were any payments ever taken out of

5 his bank accounts by PPI?

6 A. Not by PPI.

7 Q. By Cedar Fair?

8 A. No.

9 Q. By anyone?

10 A. I understand based on documentation I

11 have seen that the bank did.

12 Q. What bank?

13 A. Whatever bank it was that those

14 deposits were made into.

15 Q. Mr. Nail's bank?

16 A. Yes.

17 Q. At whose direction?

18 MS. KIRILA: Objection. Assumes

19 facts, but you can answer based on your

20 role.

21 A. Our -- based on the order that we made

22 on October 18th, they were unable to make the

23 correction in time. So before the money was

24 deposited, so an adjustment was made, a correction

25 was made.

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1 C. Freeman

2 Q. I am going to return to that topic in

3 a few minutes.

4 MR. PAPPAS: First I am going to have

5 this marked as Exhibit J.

6 (Defendant's Exhibit J, letter from

7 Craig Freeman to Lester Nail, October 23,

8 2007, Bates No. LES00019, marked for

9 identification, this date.)

10 Q. Before looking at J, just take another

11 look at Exhibit I again, the previous letter.

12 Can you take a look at Exhibit I?

13 A. I'm sorry, yes.

14 Q. And the second paragraph you say, you

15 will be receiving information regarding your

16 options under COBRA.

17 Do you see that?

18 A. Yes.

19 Q. Was Mr. Nail ever given any

20 information regarding his options under COBRA as

21 far as you know?

22 A. I don't have specific information.

23 Q. Do you know one way or the other?

24 A. I don't know one way or the other

25 whether he received that information.

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1 C. Freeman

2 Q. Do you know whether it was sent to

3 him?

4 A. I have no specific knowledge.

5 Q. Do you have any general knowledge?

6 A. All I know is that it was supposed to

7 have been sent to him.

8 Q. At whose direction?

9 A. It should have been at the direction

10 of someone on my staff.

11 Q. I will show you what has been marked

12 as Defendant's Exhibit J. And this is a letter

13 that you sent to Mr. Nail on or about October 23,

14 2007, correct?

15 A. Yes.

16 Q. Did you write this?

17 A. Yes.

18 Q. Is that your signature?

19 A. Yes.

20 Q. Did you discuss this letter with

21 Mr. Kinzel or Mr. Crage before you sent it?

22 A. Not to my recollection.

23 Q. Did you discuss it with anyone before

24 you sent it?

25 A. I don't know.

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1 C. Freeman

2 Q. Did anyone other than you review it

3 before it went out?

4 A. I don't know whether I reviewed this

5 with counsel or not.

6 Q. Other than counsel?

7 A. Just my assistant.

8 Q. Your secretary?

9 A. Yes.

10 Q. Did anyone have to approve this before

11 it went out?

12 A. No.

13 Q. Do you know if Mr. Nail ever received

14 your October 19, 2007 letter, Exhibit I?

15 A. He received it with this October 23rd

16 letter because we got the return receipt when it

17 was forwarded to his new address.

18 Q. So you enclosed another copy of the

19 October 19th letter with your October 23rd letter;

20 is that correct?

21 A. Yes.

22 Q. Did you ever hear from Mr. Nail after

23 you sent these letters?

24 A. Yes.

25 Q. When did you hear from him?

38 (Pages 146 to 149)

<p style="text-align: right;">Page 150</p> <p>1 C. Freeman</p> <p>2 A. Within a matter of days.</p> <p>3 Q. Between the time that you learned that</p> <p>4 Mr. Nail was employed at Denny's and the time you</p> <p>5 sent out these letters did you make any attempt to</p> <p>6 contact Mr. Nail?</p> <p>7 A. No.</p> <p>8 Q. As far as you know did anyone at PPI</p> <p>9 or Cedar Fair make any attempt to contact Mr. Nail</p> <p>10 during that time period?</p> <p>11 A. No.</p> <p>12 Q. As far as you know?</p> <p>13 A. I'm sorry, I said no.</p> <p>14 Q. I am sorry, I didn't hear you.</p> <p>15 How soon after you sent out the</p> <p>16 October 23, 2000 letter, Exhibit J, did you hear</p> <p>17 from Mr. Nail?</p> <p>18 A. My recollection is it was within a</p> <p>19 matter of days.</p> <p>20 Q. Did you hear from him before or after</p> <p>21 you received the return receipt?</p> <p>22 A. I don't know.</p> <p>23 Q. When you heard from Mr. Nail he called</p> <p>24 you, correct?</p> <p>25 A. That's my recollection, yes.</p>	<p style="text-align: right;">Page 152</p> <p>1 C. Freeman</p> <p>2 He indicated that he contacted a</p> <p>3 former, I believe it was a former boss that he had</p> <p>4 worked for and I think he was just -- he was going</p> <p>5 to use this person for a reference and ended up</p> <p>6 getting a job offer and that it was not</p> <p>7 necessarily a job that he would have gone out and</p> <p>8 sought, but it was -- it was a job, and he</p> <p>9 indicated that he felt that the contract language</p> <p>10 was ambiguous and that there was no intent on his</p> <p>11 part to do anything wrong, that he would, he would</p> <p>12 come up and personally meet with Dick and Peter</p> <p>13 and tell them that.</p> <p>14 He said that the bank transaction that</p> <p>15 you referred to earlier was a mistake on our part,</p> <p>16 that he had consulted with his counsel and felt he</p> <p>17 had a very strong case. He said -- I'm sorry that</p> <p>18 this is not -- this is according to how it's</p> <p>19 coming to mind, not necessarily chronologically,</p> <p>20 so I apologize for that.</p> <p>21 Q. I understand.</p> <p>22 A. He indicated at one point that if all</p> <p>23 we were looking to do was not pay the remainder of</p> <p>24 his employment agreement and just call it even so</p> <p>25 to speak, that he would be OK with that.</p>
<p style="text-align: right;">Page 151</p> <p>1 C. Freeman</p> <p>2 Q. How long did that initial conversation</p> <p>3 last?</p> <p>4 A. I don't remember.</p> <p>5 Q. Do you recall what was discussed in</p> <p>6 that initial conversation?</p> <p>7 A. We had more than one conversation</p> <p>8 during that time frame and I -- I couldn't tell</p> <p>9 you what was said in one versus another.</p> <p>10 Q. How many conversations did you have</p> <p>11 after you sent out the October 23rd, 2007 letter?</p> <p>12 A. If I had to pick a number, I'd say</p> <p>13 three.</p> <p>14 Q. You're saying that you can't</p> <p>15 distinguish what was said in one of those</p> <p>16 conversations as opposed to the other?</p> <p>17 A. Not specifically, no.</p> <p>18 Q. Can you tell me generally then what</p> <p>19 was, whatever you remember was said in any of</p> <p>20 those conversations?</p> <p>21 A. Sure. Mr. Nail indicated that he had</p> <p>22 looked for a position -- he had looked for a job</p> <p>23 because he was concerned about providing for his</p> <p>24 family. He at one time said age discrimination</p> <p>25 was an issue for him.</p>	<p style="text-align: right;">Page 153</p> <p>1 C. Freeman</p> <p>2 That's my recollection of those</p> <p>3 conversations during that time frame.</p> <p>4 Q. What was your side of those</p> <p>5 conversations?</p> <p>6 A. I, um, told Mr. Nail that we felt that</p> <p>7 he needed to pay us back for what we had paid him</p> <p>8 since he became employed. I asked him when he</p> <p>9 became employed. And he eventually shared that</p> <p>10 information, which I didn't mention earlier.</p> <p>11 I told him that other executives that</p> <p>12 were on contracts had found other employment, but</p> <p>13 he was the only one who did not contact me.</p> <p>14 I told him that I had talked to Dick</p> <p>15 Kinzel about the situation and that Dick had</p> <p>16 indicated that the way to resolve this was to</p> <p>17 write a check to pay us the full amount. Pay PPI</p> <p>18 the full amount.</p> <p>19 This goes back and forth a little bit,</p> <p>20 but Lester said, you know, indicated to me that if</p> <p>21 we were to file a lawsuit that he would file a</p> <p>22 counterclaim. We would probably end up in</p> <p>23 mediation.</p> <p>24 That's pretty much the extent of my</p> <p>25 recollection of the conversations.</p>

39 (Pages 150 to 153)

<p style="text-align: right;">Page 154</p> <p>1 C. Freeman</p> <p>2 Q. Were all these conversations strictly</p> <p>3 between the two of you or was anyone else</p> <p>4 involved?</p> <p>5 A. On my side they were strictly between</p> <p>6 the two of us. I was the only one on my side of</p> <p>7 the conversation.</p> <p>8 Q. Do you know if anyone was present with</p> <p>9 Mr. Nail on his side of the conversation?</p> <p>10 A. I was under the impression that there</p> <p>11 was no one else present.</p> <p>12 Q. You mentioned that Mr. Nail told you</p> <p>13 that age discrimination was an issue for him. Do</p> <p>14 you know what he was referring to?</p> <p>15 A. He didn't elaborate and we didn't</p> <p>16 discuss it in any great length. He just made a</p> <p>17 statement to the extent that, you know, I can tell</p> <p>18 you that age discrimination is alive and well.</p> <p>19 Q. And as a person in charge of the HR</p> <p>20 function you didn't ask him any follow-up</p> <p>21 questions as to what he meant by age</p> <p>22 discrimination?</p> <p>23 A. Not that I recall.</p> <p>24 Q. And then you mentioned that Mr. Nail</p> <p>25 said that he had contacted a former boss for a</p>	<p style="text-align: right;">Page 156</p> <p>1 C. Freeman</p> <p>2 A. That's what he said.</p> <p>3 Q. Do you know what provision he was</p> <p>4 referring to specifically?</p> <p>5 A. I don't recall that we got that</p> <p>6 specific in our conversation.</p> <p>7 Q. Did you have any response to that</p> <p>8 comment?</p> <p>9 A. I don't remember.</p> <p>10 Q. Did you have any response to</p> <p>11 Mr. Nail's offer to personally meet with, you said</p> <p>12 Dick and Peter, I assume that's Mr. Kinzel and</p> <p>13 Mr. Crage, correct?</p> <p>14 A. Yes.</p> <p>15 Q. Did you have any response to his offer</p> <p>16 to meet with them?</p> <p>17 A. I believe I told him I would carry</p> <p>18 that message forward.</p> <p>19 Q. And did you?</p> <p>20 A. Yes.</p> <p>21 Q. And what was their response?</p> <p>22 A. Really it would have been Mr. Kinzel.</p> <p>23 Mr. Crage was directly involved, but he was not</p> <p>24 interested in that.</p> <p>25 Q. So Mr. Kinzel told you he did not wish</p>
<p style="text-align: right;">Page 155</p> <p>1 C. Freeman</p> <p>2 reference and got a job offer. Was he referring</p> <p>3 to Denny's?</p> <p>4 A. Yes.</p> <p>5 Q. Do you know who the former boss was?</p> <p>6 A. No.</p> <p>7 Q. And according to you Mr. Nail said</p> <p>8 that the Denny's job was not necessarily a job</p> <p>9 that he would have sought, but it was a job. He</p> <p>10 was referring to his Denny's job, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Was it your impression that Mr. Nail</p> <p>13 wasn't crazy about his job at Denny's?</p> <p>14 A. My impression was that it was not a</p> <p>15 job that he would have gone out for and applied</p> <p>16 for. We didn't talk about his current level of</p> <p>17 satisfaction with the position.</p> <p>18 Q. Did you get the impression that he</p> <p>19 would have left Denny's if he had got a better</p> <p>20 offer somewhere else?</p> <p>21 A. I didn't really form an impression one</p> <p>22 way or the other.</p> <p>23 Q. You said Mr. Nail told you that he</p> <p>24 felt his employment contract was ambiguous; is</p> <p>25 that correct?</p>	<p style="text-align: right;">Page 157</p> <p>1 C. Freeman</p> <p>2 to meet with Mr. Nail; is that correct?</p> <p>3 A. Right.</p> <p>4 Q. Did you have any response to</p> <p>5 Mr. Nail's comment concerning the bank withdrawal</p> <p>6 transaction? Where he said it was a mistake on</p> <p>7 PPI's part.</p> <p>8 A. Not that I recall.</p> <p>9 Q. Did you have any response to his</p> <p>10 comment that he would be willing to accept it if</p> <p>11 PPI stopped paying him on a going forward basis?</p> <p>12 A. Getting back to the chronology of</p> <p>13 these discussions, I believe that that was in --</p> <p>14 that was early on before I knew what his</p> <p>15 employment date with Denny's was.</p> <p>16 At the time my thinking was that if we</p> <p>17 were not talking about a material amount of time</p> <p>18 here, you know, because again, my understanding</p> <p>19 was that the, that as of June he was still</p> <p>20 unemployed, so rolling forward from this, by the</p> <p>21 time you find a job and start, and so forth, we</p> <p>22 might have been talking about a month or so, that</p> <p>23 maybe that would have been a possibility. And I</p> <p>24 could have recommended that.</p> <p>25 But it really didn't go anywhere based</p>

40 (Pages 154 to 157)

<p style="text-align: right;">Page 158</p> <p>1 C. Freeman</p> <p>2 on when Mr. Nail actually started his other</p> <p>3 employment.</p> <p>4 Q. When did he tell you he started at</p> <p>5 Denny's?</p> <p>6 A. Do you mean what start date?</p> <p>7 Q. Did he tell you what start date he</p> <p>8 started at Denny's?</p> <p>9 A. He did tell me in a subsequent</p> <p>10 conversation, yes.</p> <p>11 Q. When did he say he started?</p> <p>12 A. He said he started February 23rd of</p> <p>13 2007.</p> <p>14 Q. Did you have any response to</p> <p>15 Mr. Nail's comment that he would file a</p> <p>16 counterclaim and that the case would probably end</p> <p>17 up in mediation?</p> <p>18 A. I don't remember what my response was.</p> <p>19 Q. You mentioned that you told Mr. Nail</p> <p>20 that the other executives with contracts who had</p> <p>21 found other employment contacted you?</p> <p>22 A. Yes.</p> <p>23 Q. Who was that?</p> <p>24 A. Who were the other executives that</p> <p>25 contacted me?</p>	<p style="text-align: right;">Page 160</p> <p>1 C. Freeman</p> <p>2 others were in the industry.</p> <p>3 Q. When PPI learned that those</p> <p>4 individuals had notified them that they had such</p> <p>5 employment, did PPI continue to pay any of those</p> <p>6 individuals under their agreements?</p> <p>7 MS. KIRILA: I am just going to object</p> <p>8 to the extent they have differing contracts</p> <p>9 from Mr. Nail, but you can answer that</p> <p>10 question.</p> <p>11 A. All of them -- all of them contacted</p> <p>12 me in advance of accepting those positions.</p> <p>13 Q. And once they accepted the positions</p> <p>14 did PPI continue to pay them under their</p> <p>15 contracts?</p> <p>16 A. No.</p> <p>17 Q. Did you discuss your various</p> <p>18 conversations with Mr. Nail with anyone?</p> <p>19 A. Mr. Kinzel.</p> <p>20 Q. What about Mr. Crage?</p> <p>21 A. I don't recall that I did.</p> <p>22 Q. Did you communicate to Mr. Kinzel the</p> <p>23 substance of what you and Mr. Nail had discussed?</p> <p>24 A. Yes.</p> <p>25 Q. Did you leave anything out?</p>
<p style="text-align: right;">Page 159</p> <p>1 C. Freeman</p> <p>2 Q. Correct.</p> <p>3 A. Mr. Thornton, Mr. Fisher, Mr. --</p> <p>4 Mr. Weber. But he didn't contact me. He</p> <p>5 contacted Mr. Kinzel.</p> <p>6 Q. Anyone else?</p> <p>7 A. Mr. Kaetzel contacted me, but that was</p> <p>8 subsequent to this conversation.</p> <p>9 Q. Anyone else?</p> <p>10 A. Do you have the names again? Because</p> <p>11 if you can read them back to me or refresh my</p> <p>12 memory?</p> <p>13 Q. Weber, Fisher, Koontz, Thornton,</p> <p>14 Petit, Jones, Kaetzel and White.</p> <p>15 A. Petit.</p> <p>16 Q. Were those notifications oral or in</p> <p>17 writing?</p> <p>18 A. You know, I know there were e-mails</p> <p>19 and telephone calls and I don't know what happened</p> <p>20 first, what the initial contact was. But they</p> <p>21 were both.</p> <p>22 Q. Did each of those individuals get a</p> <p>23 job in the theme park or water park industry?</p> <p>24 A. I believe so. I'm not specifically</p> <p>25 aware of what Mr. Thornton's position is, but the</p>	<p style="text-align: right;">Page 161</p> <p>1 C. Freeman</p> <p>2 A. I'm sure I summarized. I don't -- I</p> <p>3 don't know specifically, you know, line by line</p> <p>4 what we talked about, but it was the substance as</p> <p>5 you said.</p> <p>6 Q. Other than saying that he did not want</p> <p>7 to meet with Mr. Nail, did Mr. Kinzel have any</p> <p>8 other comments regarding your summary of your</p> <p>9 conversations with Mr. Nail?</p> <p>10 A. We discussed the issue of whether we</p> <p>11 would accept Mr. Nail's proposal of discontinuing</p> <p>12 payment and not seeking anything, any repayment.</p> <p>13 And that was contingent upon determining how long</p> <p>14 Mr. Nail had been employed.</p> <p>15 Q. Once you determined that did you have</p> <p>16 any further conversations with Mr. Kinzel about</p> <p>17 that issue?</p> <p>18 A. I'm sure I did.</p> <p>19 Q. What was discussed?</p> <p>20 A. It was too long a period of time to</p> <p>21 ignore.</p> <p>22 Q. Was that your view or his view?</p> <p>23 A. That was what we discussed.</p> <p>24 Q. Do you recall who first advanced that</p> <p>25 view in your discussion?</p>

41 (Pages 158 to 161)



Page 162

1 C. Freeman

2 A. When I found out the date, I knew that

3 it was too long a time frame and so the next time

4 we had the conversation I just pretty much

5 notified Mr. Kinzel that that is what I had found

6 out and that therefore we had to pursue getting

7 repayment.

8 Q. And he agreed with that?

9 A. Yes.

10 Q. Did you tell anyone other than

11 Mr. Kinzel about your discussion with Mr. Nail?

12 A. The -- well, do I have a specific

13 recollection? No.

14 Q. Do you recall generally discussing it

15 with anyone? Other than Mr. Kinzel?

16 A. I don't have a specific recollection

17 of discussing it with anyone else.

18 MR. PAPPAS: Mark this as K.

19 (Defendant's Exhibit K, 3-page

20 handwritten notes with some redacted

21 portions, Bates Nos. PPI00762 through 764,

22 marked for identification, this date.)

23 Q. I show you what has been marked as

24 Defendant's Exhibit K. Can you tell me what this

25 is?

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1 C. Freeman

2 A. These are my notes from my

3 conversations with Mr. Nail.

4 Q. The conversations that you just

5 testified about?

6 A. Yes.

7 Q. This is all your handwriting other

8 than the stamp that says redacted privileged?

9 A. Yes.

10 Q. Now, the first entry on your notes is

11 dated October 30th.

12 Do you see that?

13 A. Yes.

14 Q. Is that your first conversation with

15 Mr. Nail after you sent him the October 23rd

16 letter?

17 A. I believe so.

18 Q. And the number next to his name, is

19 that his home phone number?

20 A. I believe that's his cell phone

21 number.

22 Q. Can you read that first line?

23 A. "Where are we going with this?"

24 Q. What does that refer to?

25 A. That was a question he asked.

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1 C. Freeman

2 Q. Did you respond to that?

3 A. I'm sure I did.

4 Q. Do you recall what your response was?

5 A. No, I don't.

6 Q. Can you read the next line?

7 A. "Disagrees with our interpretation of

8 the agreement."

9 Q. That's something Mr. Nail said?

10 A. Yes.

11 Q. Do you recall your response to that?

12 A. No.

13 Q. Do you know what that refers to

14 specifically?

15 A. The employment agreement.

16 Q. Do you know what interpretation he is

17 talking about?

18 A. That we were entitled to -- that he

19 had violated the employment agreement by virtue of

20 accepting the position with Denny's.

21 Q. Anything else?

22 A. I believe that's the interpretation we

23 were, that we were discussing.

24 Q. And the next line I believe says

25 "contract poorly written, ambiguous," correct?

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1 C. Freeman

2 A. Yes.

3 Q. That again was Mr. Nail's comment?

4 A. Yes.

5 Q. And you don't recall your response to

6 that, correct?

7 A. No.

8 Q. Not correct or you don't recall?

9 A. I don't recall.

10 Q. Then it says, "what can we do?" Did I

11 read that correctly?

12 A. "What can we do?" Yes.

13 Q. And what does that refer to?

14 A. I believe this was Lester asking me,

15 you know, what can we do to resolve this.

16 Q. Did you have a response to that?

17 A. I don't recall what I said.

18 Q. What does the next line say?

19 A. I started to make a note that I didn't

20 complete because I was trying to make notes as

21 Lester was talking. "Factual things nullify if,"

22 and I don't know where, I don't know what would

23 complete that thought.

24 Q. Do you have any idea what the first

25 part refers to, "factual things nullify"?

<p style="text-align: right;">Page 174</p> <p>1 C. Freeman</p> <p>2 didn't point out 7(c) in the employment agreement</p> <p>3 to him.</p> <p>4 Q. Did you have any response to that?</p> <p>5 A. I don't recall.</p> <p>6 Q. Then the next entry I believe says</p> <p>7 "made mistake taking money out of my checking</p> <p>8 account"; is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. That's what you referred to earlier</p> <p>11 before I gave you these notes?</p> <p>12 A. Yes.</p> <p>13 Q. There's a block that's blocked out and</p> <p>14 it says: Redacted - privileged.</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Who were those notes to?</p> <p>18 A. I, through this entire process I was</p> <p>19 continuously checking with and consulting with my</p> <p>20 counsel, and so I would in my conversations with</p> <p>21 counsel I would make notes that were related to</p> <p>22 this and that's what these sections were.</p> <p>23 Q. So all of the ones that are blocked</p> <p>24 out on this page you're writing about your</p> <p>25 communications with counsel?</p>	<p style="text-align: right;">Page 176</p> <p>1 C. Freeman</p> <p>2 A. Upon consultation with Mr. Kinzel</p> <p>3 regarding this matter, we decided that we were</p> <p>4 going to proceed with a complaint and he</p> <p>5 suggested, he actually suggested that I contact</p> <p>6 Mr. Nail and give him a heads up so that he didn't</p> <p>7 just get it cold.</p> <p>8 Q. When was the first time you discussed</p> <p>9 the possibility of filing a court action against</p> <p>10 Mr. Nail with Mr. Kinzel?</p> <p>11 A. I don't recall.</p> <p>12 Q. Was it prior to your conversations</p> <p>13 with Mr. Nail which began on October 30th or</p> <p>14 subsequent to that?</p> <p>15 A. I don't know.</p> <p>16 Q. It was after the decision was made to</p> <p>17 stop making payments to Mr. Nail, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Sometime between that date, which is</p> <p>20 about October 18th, and November 27th, a decision</p> <p>21 was made to sue Mr. Nail?</p> <p>22 A. Yes.</p> <p>23 Q. I don't want you to tell me about any</p> <p>24 conversations where counsel was present.</p> <p>25 Did you have any other conversations</p>
<p style="text-align: right;">Page 175</p> <p>1 C. Freeman</p> <p>2 A. Yes.</p> <p>3 Q. Is there anything other than that</p> <p>4 that's blocked out?</p> <p>5 A. No.</p> <p>6 Q. Were those communications on that same</p> <p>7 day?</p> <p>8 A. I don't know. They would have had</p> <p>9 dates associated with them.</p> <p>10 Q. Did you distribute these notes to</p> <p>11 anyone?</p> <p>12 A. No.</p> <p>13 Q. The next date entry is for</p> <p>14 November 27, 2007, correct?</p> <p>15 A. Yes.</p> <p>16 Q. And I believe it says "left Lester a</p> <p>17 VM." Well, why don't you read it? I can't really</p> <p>18 read it.</p> <p>19 A. "Left Lester a voice mail, VM, voice</p> <p>20 mail, that we have filed a complaint."</p> <p>21 Q. And by complaint you mean the court</p> <p>22 complaint in this action?</p> <p>23 A. Yes.</p> <p>24 Q. And why did you let Mr. Nail know that</p> <p>25 a complaint had been filed?</p>	<p style="text-align: right;">Page 177</p> <p>1 C. Freeman</p> <p>2 with Mr. Kinzel regarding potentially or actually</p> <p>3 suing Mr. Nail?</p> <p>4 A. It would have been just very brief,</p> <p>5 general updates concerning the status and moving</p> <p>6 ahead.</p> <p>7 Q. Who brought up the idea of suing</p> <p>8 Mr. Nail first?</p> <p>9 A. Mr. Kinzel.</p> <p>10 Q. Do you recall when that was?</p> <p>11 A. No.</p> <p>12 Q. Do you recall what he said?</p> <p>13 A. Not specifically.</p> <p>14 Q. Do you recall generally what he said</p> <p>15 other than bringing up the idea?</p> <p>16 A. No.</p> <p>17 Q. Did you have any response to him</p> <p>18 bringing up the idea?</p> <p>19 A. I discussed with Mr. Kinzel the</p> <p>20 potential for settling.</p> <p>21 Q. What was discussed about that?</p> <p>22 A. Just the value of the suit in terms of</p> <p>23 the court costs and legal fees and so forth versus</p> <p>24 the recovering full amount and, you know, what</p> <p>25 would make sense.</p>

45 (Pages 174 to 177)

<p style="text-align: right;">Page 178</p> <p>1 C. Freeman</p> <p>2 Q. What was --</p> <p>3 A. From a, strictly from a cost</p> <p>4 standpoint.</p> <p>5 Q. What was your view and what was his</p> <p>6 view on that issue?</p> <p>7 A. I was probing. I was simply probing</p> <p>8 and his response was we want back everything we're</p> <p>9 entitled to.</p> <p>10 Q. Do you recall anything else about any</p> <p>11 other discussions you had with either Mr. Kinzel</p> <p>12 or Mr. Crag regarding suing Mr. Nail?</p> <p>13 MS. KIRILA: Objection. Outside the</p> <p>14 presence of counsel you can answer.</p> <p>15 MR. PAPPAS: Correct.</p> <p>16 A. No.</p> <p>17 Q. Who ultimately made the decision to</p> <p>18 sue Mr. Nail, do you know?</p> <p>19 A. Mr. Kinzel.</p> <p>20 Q. How do you know that?</p> <p>21 A. Because I was reporting directly to</p> <p>22 him on the matter and he would have had to approve</p> <p>23 that actually.</p> <p>24 Q. The last page of your notes --</p> <p>25 A. I'm sorry, I just want to elaborate a</p>	<p style="text-align: right;">Page 180</p> <p>1 C. Freeman</p> <p>2 A. It would have been before the next</p> <p>3 conversation, which was on the 7th or the next</p> <p>4 voice mail. So sometime between those two dates.</p> <p>5 Q. Can you read the first entry under</p> <p>6 11/29?</p> <p>7 A. "Lester returned call; appreciated</p> <p>8 heads up."</p> <p>9 Q. That refers to you letting him know</p> <p>10 that the lawsuit was filed?</p> <p>11 A. Yes.</p> <p>12 Q. Can you read the next entry?</p> <p>13 A. "Reiterated there was no intent on his</p> <p>14 part to violate the agreement and he doesn't</p> <p>15 believe he did."</p> <p>16 Q. Do you have any response to that?</p> <p>17 A. I don't recall.</p> <p>18 Q. Next entry?</p> <p>19 A. "Will come here and look Dick, slash,</p> <p>20 Peter in the eye and tell them that."</p> <p>21 Q. So he is again offering to come and</p> <p>22 speak to Mr. Crag and Mr. Kinzel; am I correct?</p> <p>23 A. That wasn't an again. This was the</p> <p>24 comment that I referred to earlier before you gave</p> <p>25 me these notes.</p>
<p style="text-align: right;">Page 179</p> <p>1 C. Freeman</p> <p>2 little bit.</p> <p>3 Q. Certainly.</p> <p>4 A. This was all of course with advice and</p> <p>5 consultation with counsel through the process as</p> <p>6 well in terms of, you know, whether -- whether,</p> <p>7 um, what type of suit would be filed and that sort</p> <p>8 of thing. Where it would have to be filed and,</p> <p>9 you know, just the technicalities and mechanics.</p> <p>10 Q. The last page of your notes, the first</p> <p>11 entry is November 29th, 2007, correct?</p> <p>12 A. Yes.</p> <p>13 Q. Do you know what that little equal</p> <p>14 sign is next to that?</p> <p>15 A. Yes, I wasn't absolutely sure that</p> <p>16 that was the date. So I just indicated it was on</p> <p>17 or about November 29th because I made this note</p> <p>18 after the conversation.</p> <p>19 Q. The previous notes were made during</p> <p>20 the conversations?</p> <p>21 A. Yes.</p> <p>22 Q. And this particular note 11/29 was</p> <p>23 made sometime after that conversation?</p> <p>24 A. Yes.</p> <p>25 Q. How soon after?</p>	<p style="text-align: right;">Page 181</p> <p>1 C. Freeman</p> <p>2 Q. So that was the first time he</p> <p>3 mentioned that?</p> <p>4 A. As far as I can recall, yes.</p> <p>5 Q. Did you have any response to that?</p> <p>6 When you told him that you would send that along.</p> <p>7 Other than that did you have any response?</p> <p>8 A. Not that I recall.</p> <p>9 Q. Can you read the next entry?</p> <p>10 A. "Discussed whether there is room to</p> <p>11 negotiate; told him I would talk to Dick."</p> <p>12 Q. Mr. Nail was asking you if there was</p> <p>13 room to negotiate?</p> <p>14 A. Yes.</p> <p>15 Q. Did you have authority to negotiate at</p> <p>16 that point?</p> <p>17 A. No.</p> <p>18 Q. You said you would talk to Dick.</p> <p>19 That's Mr. Kinzel, correct?</p> <p>20 A. Yes.</p> <p>21 Q. And then the last line says "He said</p> <p>22 his New York attorney says he has a very strong</p> <p>23 case"?</p> <p>24 A. Feels.</p> <p>25 Q. "Feels he has a very strong case." Do</p>

46 (Pages 178 to 181)



<p style="text-align: right;">Page 190</p> <p>1 C. Freeman</p> <p>2 Q. It's not a competitor of the industry</p> <p>3 that PPI or Cedar Fair is in, is it?</p> <p>4 A. No.</p> <p>5 Q. It's a restaurant chain, right?</p> <p>6 A. Yes. PPI has restaurants.</p> <p>7 Q. Within its hotels or within its parks?</p> <p>8 A. Both. I'm sorry, PPI has no hotels.</p> <p>9 Cedar Fair has hotels.</p> <p>10 Q. Other than those restaurants -- how</p> <p>11 many restaurants are there?</p> <p>12 A. In the hotels or adjacent to the</p> <p>13 hotels?</p> <p>14 Q. Any restaurant operated by PPI or</p> <p>15 Cedar Fair.</p> <p>16 A. Many, many, many, many, many.</p> <p>17 Q. And those are on the properties of the</p> <p>18 various amusement parks and water parks?</p> <p>19 A. Yes.</p> <p>20 Q. And they're in the nature of</p> <p>21 concession stands and things like that?</p> <p>22 A. No. For example, at Knott's Berry</p> <p>23 Farm we have a TGI Friday's that operates on the</p> <p>24 property but outside the park that's accessible to</p> <p>25 anybody off the street.</p>	<p style="text-align: right;">Page 192</p> <p>1 C. Freeman</p> <p>2 MS. KIRILA: Objection. That's the</p> <p>3 basis of the suit. You can answer.</p> <p>4 Q. In your view is there anything</p> <p>5 inherently inconsistent with him performing</p> <p>6 services for both, assuming he had the time to do</p> <p>7 both?</p> <p>8 A. Assuming he had the time to do both,</p> <p>9 no.</p> <p>10 Q. To your knowledge would PPI -- was PPI</p> <p>11 involved in any litigation against Denny's?</p> <p>12 A. Not to my knowledge.</p> <p>13 Q. What about Cedar Fair?</p> <p>14 A. Not to my knowledge.</p> <p>15 Q. Do you have any knowledge one way or</p> <p>16 the other whether Mr. Nail would have been willing</p> <p>17 or able to cease his Denny's employment if he had</p> <p>18 been requested to perform services for PPI during</p> <p>19 the contract term?</p> <p>20 MS. KIRILA: Object to the extent it</p> <p>21 calls for a definition of a legal term in a</p> <p>22 contract, but you can answer.</p> <p>23 A. I have no such knowledge.</p> <p>24 Q. If Mr. Nail had been willing to cease</p> <p>25 his Denny's employment at any time if asked to</p>
<p style="text-align: right;">Page 191</p> <p>1 C. Freeman</p> <p>2 There's also a Chicken Dinner</p> <p>3 Restaurant, full service restaurant at that</p> <p>4 facility at that location and again, it's outside</p> <p>5 the park. It's not part of the gated admission</p> <p>6 price. It is available to anybody.</p> <p>7 Cedar Point has TGI Friday's outside</p> <p>8 the park accessible to anybody.</p> <p>9 Famous Dave's, outside the park.</p> <p>10 Knott's also has restaurants in their hotel that</p> <p>11 are accessible to anybody.</p> <p>12 Q. Do they operate restaurants</p> <p>13 independently of the parks? Restaurants other</p> <p>14 than that are either on the property of the park</p> <p>15 or adjacent to the park.</p> <p>16 A. The TGI Friday's in Sandusky is</p> <p>17 located at a hotel property owned by Cedar Fair,</p> <p>18 but about, I don't know, two, three miles away</p> <p>19 from the park.</p> <p>20 Q. Other than that?</p> <p>21 A. No.</p> <p>22 Q. Assuming that he had the time to do</p> <p>23 both, is there anything inherently inconsistent</p> <p>24 with Mr. Nail performing services for PPI while</p> <p>25 being employed by Denny's?</p>	<p style="text-align: right;">Page 193</p> <p>1 C. Freeman</p> <p>2 perform services for PPI, do you contend that his</p> <p>3 Denny's employment still rendered him unable to</p> <p>4 perform services for PPI?</p> <p>5 MS. KIRILA: Same objection. But you</p> <p>6 can answer.</p> <p>7 A. Could you please repeat the question?</p> <p>8 Q. Sure, if Mr. Nail had been willing and</p> <p>9 able to stop working at Denny's at any time if</p> <p>10 asked to perform services for PPI, would his mere</p> <p>11 employment by Denny's have rendered him unable to</p> <p>12 perform exclusive services for PPI?</p> <p>13 MS. KIRILA: Same objection.</p> <p>14 A. Not from the point he would have</p> <p>15 terminated his employment with Denny's.</p> <p>16 Q. In March '08 Cedar Fair hired Duffield</p> <p>17 Milkie as corporate vice president and general</p> <p>18 counsel; is that correct?</p> <p>19 A. February.</p> <p>20 Q. February 2008?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know who hired Mr. Milkie?</p> <p>23 A. Cedar Fair.</p> <p>24 Q. Do you know the person who hired</p> <p>25 Mr. Milkie?</p>

49 (Pages 190 to 193)

<p style="text-align: right;">Page 194</p> <p>1 C. Freeman</p> <p>2 A. He was selected by Mr. Kinzel.</p> <p>3 Q. Do you know why he was hired?</p> <p>4 A. He was hired to become corporate vice</p> <p>5 president and general counsel for Cedar Fair LP.</p> <p>6 Q. They had never had that type of</p> <p>7 position before, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Did you discuss Mr. Milkie's hiring</p> <p>10 with anyone?</p> <p>11 A. Talked with Mr. Crage, Mr. Kinzel. HR</p> <p>12 director, my assistant.</p> <p>13 Q. Was that before or after he was hired?</p> <p>14 A. Before, during and after.</p> <p>15 Q. Did you have any input into his</p> <p>16 hiring?</p> <p>17 A. I did not interview Mr. Milkie.</p> <p>18 Q. Other than interviewing him did you</p> <p>19 have any input into his hire?</p> <p>20 MS. KIRILA: Objection. He testified</p> <p>21 you did not interview him.</p> <p>22 THE WITNESS: No.</p> <p>23 Q. You can have input other than</p> <p>24 interviewing someone. So I am asking other than</p> <p>25 interviewing did you have any input?</p>	<p style="text-align: right;">Page 196</p> <p>1 C. Freeman</p> <p>2 bank could not process my order from the 18th</p> <p>3 before the money went into the account.</p> <p>4 Q. So the money was already in the</p> <p>5 account and you authorized the -- who did you</p> <p>6 authorize to take the money out of the account?</p> <p>7 MS. KIRILA: Object to form. Compound</p> <p>8 question.</p> <p>9 Q. The money was already in the account,</p> <p>10 correct?</p> <p>11 A. Not when I -- not when I directed that</p> <p>12 the payment be stopped.</p> <p>13 Q. Right, but they couldn't stop it in</p> <p>14 time and some more money got put into the account,</p> <p>15 correct?</p> <p>16 MS. KIRILA: Objection. To the extent</p> <p>17 you know.</p> <p>18 Q. Isn't that what you just testified to?</p> <p>19 A. The money could not be stopped from</p> <p>20 going into the account based on the timing of my</p> <p>21 order to stop the payment.</p> <p>22 Q. And if it could not be stopped from</p> <p>23 going into the account that means that it went</p> <p>24 into the account, correct?</p> <p>25 A. To my knowledge, it did.</p>
<p style="text-align: right;">Page 195</p> <p>1 C. Freeman</p> <p>2 A. I expressed my opinion. You know,</p> <p>3 input is given and input is taken and I don't know</p> <p>4 how much my opinion was considered.</p> <p>5 Q. What was your opinion, that general</p> <p>6 counsel should or should not be hired?</p> <p>7 A. I felt that the position was</p> <p>8 necessary.</p> <p>9 Q. Do you know when Cedar Fair first</p> <p>10 considered hiring Mr. Milkie?</p> <p>11 A. First considered. The very -- the</p> <p>12 very first contact that I'm aware of between</p> <p>13 Mr. Milkie and Cedar Fair regarding a position was</p> <p>14 in the summer of 2007.</p> <p>15 Q. But he wasn't hired until February '08</p> <p>16 you said?</p> <p>17 A. Right.</p> <p>18 Q. I want to go back to the reversal of</p> <p>19 the direct deposit. Did you authorize that?</p> <p>20 A. Yes. I authorized -- I authorized</p> <p>21 stopping the payment of the paycheck that was to</p> <p>22 be paid on the 19th.</p> <p>23 Q. Who authorized the reversal of the</p> <p>24 direct deposit?</p> <p>25 A. I guess that would be me. Because the</p>	<p style="text-align: right;">Page 197</p> <p>1 C. Freeman</p> <p>2 Q. Then what happened?</p> <p>3 A. Based on my order to stop the payment</p> <p>4 on the 18th, a correction was made to reverse it.</p> <p>5 Q. Who made that correction?</p> <p>6 A. The bank.</p> <p>7 Q. Who communicated that to the bank?</p> <p>8 A. Debbie Thompson.</p> <p>9 Q. Who is Debbie Thompson?</p> <p>10 A. Payroll manager.</p> <p>11 Q. Of Cedar Fair?</p> <p>12 A. PPI.</p> <p>13 Q. PPI? Reports to you?</p> <p>14 A. No.</p> <p>15 Q. Who does she report to?</p> <p>16 A. I believe she reports to Les --</p> <p>17 THE WITNESS: What is Les's last name,</p> <p>18 Lester? Les in IT?</p> <p>19 MS. KIRILA: You can testify to your</p> <p>20 knowledge.</p> <p>21 A. Les in IT.</p> <p>22 MR. PAPPAS: Can you mark this as</p> <p>23 Exhibit M.</p> <p>24 (Defendant's Exhibit M, e-mail from</p> <p>25 Craig Freeman to Debbie Thompson, dated</p>

50 (Pages 194 to 197)

<p style="text-align: right;">Page 198</p> <p>1 C. Freeman</p> <p>2 October 27, 2007 and e-mail from Thompson to</p> <p>3 Freeman, dated October 25, 2007, Bates No.</p> <p>4 PPI000103, marked for identification, this</p> <p>5 date.)</p> <p>6 Q. I show you what has been marked as</p> <p>7 Defendant's Exhibit M. The top portion is an</p> <p>8 e-mail that you sent to Debbie Thompson on</p> <p>9 October 27, 2007; is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. And what does that refer to?</p> <p>12 A. This refers to my notifying her on</p> <p>13 Thursday, October 18th, that Lester was not to be</p> <p>14 paid.</p> <p>15 Q. And the e-mail below that is from</p> <p>16 Debbie Thompson to you and you received that on</p> <p>17 October 25, 2007; is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. What does her e-mail refer to?</p> <p>20 A. Her e-mail refers to the correction</p> <p>21 being made. To reverse the direct deposit.</p> <p>22 Q. So after the direct deposit was</p> <p>23 reversed that meant that Mr. Nail had only been</p> <p>24 paid through the end of September, 2007; is that</p> <p>25 correct?</p>	<p style="text-align: right;">Page 200</p> <p>1 C. Freeman</p> <p>2 A. This was to calculate the value of the</p> <p>3 salary and benefits that we had overpaid between</p> <p>4 February 23rd of 2007 and September 30th of 2007.</p> <p>5 Q. And what was the value?</p> <p>6 A. \$99,000 plus \$7,983.50.</p> <p>7 Q. Isn't that the salary and benefits</p> <p>8 combined?</p> <p>9 A. Yes.</p> <p>10 Q. What is just the benefits?</p> <p>11 A. \$7,983.50.</p> <p>12 Q. Is that accurate as far as you know?</p> <p>13 Sitting here today.</p> <p>14 A. It does not reflect any payroll taxes</p> <p>15 that would have been paid.</p> <p>16 Q. It reflects medical and dental,</p> <p>17 correct?</p> <p>18 A. Life, AD and D.</p> <p>19 Q. Everything except payroll taxes?</p> <p>20 A. Everything that I'm aware of,</p> <p>21 everything that I was told.</p> <p>22 Q. So other than the salary that you say</p> <p>23 Mr. Nail was overpaid, and other than the payroll</p> <p>24 taxes, the amount as far as the value of benefits</p> <p>25 you would say he owes is what?</p>
<p style="text-align: right;">Page 199</p> <p>1 C. Freeman</p> <p>2 A. Yes.</p> <p>3 Q. Did you attempt to get Mr. Nail's</p> <p>4 authorization to take that money out of his</p> <p>5 personal bank account?</p> <p>6 A. When I gave the direction, the money</p> <p>7 was not in the account.</p> <p>8 Q. Before it was removed did anyone at</p> <p>9 the company try to get Mr. Nail's authorization to</p> <p>10 do that?</p> <p>11 A. Not that I know of.</p> <p>12 MR. PAPPAS: Mark this as Exhibit N.</p> <p>13 (Defendant's Exhibit N, e-mail from</p> <p>14 Sandy Cranford to Craig Freeman, dated</p> <p>15 November 19, 2007, Bates No. PPI000765,</p> <p>16 marked for identification, this date.)</p> <p>17 Q. I show you what has been marked as</p> <p>18 Defendant's Exhibit N as in Nancy.</p> <p>19 This is an e-mail from you -- from</p> <p>20 Sandy Cranford to you dated November 19, 2007,</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. Do you know whose handwriting that is?</p> <p>24 A. Mine.</p> <p>25 Q. And what does this e-mail refer to?</p>	<p style="text-align: right;">Page 201</p> <p>1 C. Freeman</p> <p>2 A. According to this calculation,</p> <p>3 7,983.50.</p> <p>4 Q. Did you and Mr. Cragge ever exchange</p> <p>5 e-mails about the Lester Nail situation?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Are you aware of any documents that</p> <p>8 were in existence relating to Lester Nail's</p> <p>9 situation that were deleted?</p> <p>10 A. No, I'm not.</p> <p>11 Q. Are you aware of any that were</p> <p>12 destroyed?</p> <p>13 A. No, I'm not.</p> <p>14 Q. Are you aware of any that were lost?</p> <p>15 A. No, I'm not.</p> <p>16 MR. PAPPAS: Could we just take a</p> <p>17 quick break?</p> <p>18 MS. KIRILA: Yes.</p> <p>19 (A recess was taken from 3:09 through</p> <p>20 3:15 p.m.)</p> <p>21 BY MR. PAPPAS:</p> <p>22 Q. I just have a couple of more</p> <p>23 questions. Did you ever speak to anyone who was</p> <p>24 formerly at CBS regarding the meaning of</p> <p>25 Mr. Nail's employment agreement?</p>

51 (Pages 198 to 201)

**DECLARATION OF  
A. MICHAEL WEBER**

**EXHIBIT 2**



July 27, 2006

Mr. Lester C. Nail  
9027 Kirkley Court  
Charlotte, North Carolina 28277

PLF  
EXHIBIT NO. DEPT C  
TRN FOR ID 4-23-08

Re: Notice of Termination of Employment

Dear Mr. Nail:

On June 30, 2006 (the "Closing Date"), Bombay Hook LLC and CBS Corporation finalized the transaction with Cedar Fair, L.P. and Magnum Management Corporation (the "Company"), (collectively, the "Cedar Fair Entities"), pursuant to which the Company acquired 100 percent of the outstanding shares of capital stock of Paramount Parks Inc. ("PPI"). As a result, your employment agreement, effective as of January 1, 2006 ("Employment Agreement"), has become the benefit and obligation of PPI, as legal successor and/or assign.

Please be advised that PPI has determined that your services will no longer be needed after August 1, 2006. Accordingly, this letter is your notice under your Employment Agreement that your employment is terminated without cause as of August 1, 2006, and that you will be entitled to receive, subject to applicable taxes and withholdings, and subject to any other terms of the Employment Agreement, the amounts identified in paragraph 7(c) of your Employment Agreement. PPI reminds you of both (1) your non-compete obligations under paragraph 11 of the Employment Agreement, and (2) the "willing, ready and able to render exclusive services" requirement of paragraph 7(c), and any other post-termination obligations of the Employment Agreement.

PPI is currently considering making an alternative separation proposal to you, which would incorporate a lump sum severance payment, along with other terms in a separation agreement. You will hear from PPI in the near future should it decide to present an alternative separation proposal to you. Should you have any questions, please contact Paramount Parks Inc. c/o Craig Freeman, Cedar Fair, L.P., One Cedar Point Drive, Sandusky, Ohio 44870, (419) 627-2391.

Very truly yours,

Richard L. Kinzel  
President  
Paramount Parks, Inc.

**DECLARATION OF  
A. MICHAEL WEBER**

**EXHIBIT 3**

---

**From:** Weber, Michael  
**Sent:** Wednesday, April 16, 2008 12:20 PM  
**To:** 'Kirila, Jill S.'  
**Subject:** RE: PPI v. Nail

I need an answer to my question by tomorrow.

---

**From:** Weber, Michael  
**Sent:** Tuesday, April 15, 2008 3:04 PM  
**To:** Kirila, Jill S.  
**Subject:** RE: PPI v. Nail

Jill,

On behalf of our client, we reject your offer.

Please confirm in writing that the two individuals you claim have no knowledge of the facts in this case will not testify in the trial.

Michael

---

**DECLARATION OF  
A. MICHAEL WEBER**

**EXHIBIT 4**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PARAMOUNT PARKS, INC., . Case No. 07-cv-10595-SHS  
Plaintiff, .  
vs. . New York, New York  
Friday, February 29, 2008  
LESTER NAIL, .  
Defendant. .  
.....

TRANSCRIPT OF PRETRIAL CONFERENCE  
BEFORE THE HONORABLE SIDNEY H. STEIN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES: (On the Record)

For the Plaintiff: Jill Suzanne Kirila, Esq.  
SQUIRE, SANDERS & DEMPSEY, LLP  
41 South High Street  
Columbus, Ohio 43215  
Steven Skulnik, Esq.  
SQUIRE, SANDERS & DEMPSEY, LLP  
350 Park Avenue  
New York, New York 10022

For the Defendant: A. Michael Weber, Esq.  
LITTLER MENDELSON, P.C.  
885 Third Avenue, 16th Floor  
New York, New York 10022

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by Court Personnel

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1 THE COURT: Ooh, ooh. All right.

2 MS. KIRILA: So, even if you assume that there's some  
3 argument there, we don't need it, and that's why I'd like to  
4 move on those bases as soon as we can, and two of the  
5 depositions that were notices this is the CEO and the CFO of a  
6 publicly traded company, the parent that bought Paramount  
7 Parks, had nothing to do with the underlying contract.

8 In fact, they inherited it, met the obligations when  
9 they changed over their executives and so they have no  
10 knowledge whatsoever about the terms of Mr. Nail's employment,  
11 that contract or how it came about. They just followed the  
12 written letter of it and they expect Mr. Nail to do the same.

13 THE COURT: But the defendant just said that they had  
14 conversations with his client over it.

15 MR. WEBER: And he signed --

16 THE COURT: Wait.

17 MS. KIRILA: May I finish. Even if there is some  
18 argument hat they had conversations with him, that's not going  
19 to trump the written word of the agreement. It has nothing to  
20 do with those other sections in paragraph --

21 THE COURT: No, but if they had conversations with him  
22 about the contract, he's entitled -- this is, you know,  
23 discovery. He's entitled to ask them about those  
24 conversations.

25 MS. KIRILA: And it's my understanding there were no

1 MS. KIRILA: I am, Your Honor.

2 THE COURT: All right.

3 MS. KIRILA: Paragraph 5 and Paragraph 11.

4 THE COURT: All right. But the parties will work this  
5 out.

6 MR. WEBER: Yes, Your Honor.

7 THE COURT: Or not.

8 MR. WEBER: Or not.

9 THE COURT: Tell me about the -- what you think your  
10 client had conversations with the two higher-ups that you  
11 wanted to --

12 MR. WEBER: He did -- he did have conversations, Your  
13 Honor, very specific ones with the individuals that we've  
14 noticed for depositions.

15 THE COURT: Okay. You've noticed their depositions  
16 already?

17 MR. WEBER: Yes, sir.

18 THE COURT: Okay. What I want you to do then is to  
19 send me a -- and if you feel you've, you know, run the string  
20 in terms of talking about this, send me a letter and it will be  
21 a letter application, a motion for protective order against the  
22 depositions and tell me why that they have no knowledge, they  
23 had conversations, and find out from Mr. Weber what -- the  
24 reasons why he thinks they have so you can address it up front,  
25 and then Mr. Weber respond in a letter, I'll accept those

1 representations as representations of your client. If you want  
2 to attach an affidavit of your client, you're certainly  
3 entitled to but I still will accept if you don't want to go  
4 through that --

5 MR. WEBER: Well, Your Honor --

6 THE COURT: -- I'll accept what you say in the letter.  
7 Go ahead.

8 MR. WEBER: I appreciate that you're saying, but I'd  
9 like to take these witnesses' deposition first and -- before I  
10 necessarily say -- what my client is going to say. I'd like to  
11 pin them down before they hear what my client is going to say.  
12 That's my right --

13 THE COURT: Okay. But here's -- I understand that  
14 also, but they're going to move for a protective order, and  
15 their motion is going to be these people have absolutely  
16 nothing to say about this, and they're mucks-a-mucks, and -- I  
17 don't mean that pejoratively. I mean, you know, they are major  
18 officers of a public -- public corporation, and there are  
19 57,000 employees who sue them, you know, they're busy men.  
20 That's what you're going to be saying, and they shouldn't have  
21 to come away from what they do for you. You can in part  
22 undercut that in your response if you want and say we'll go  
23 there and we'll go to their suites so their time isn't taken.  
24 Whatever it is.

25 But, if she says they have absolutely no knowledge,

1 that's pretty powerful to me and you're going to have to tell  
2 me why you think they do have some knowledge, the extent --

3 MR. WEBER: I'm fine with that, Your Honor.

4 THE COURT: -- that you want to disclose the specifics  
5 is up to you, but if she says they're higher-ups, they're busy  
6 people, they have nothing to do with this, they took it only  
7 because the contract came with a company that they purchased.  
8 Sounds good to me unless you tell me otherwise.

9 MR. WEBER: I have no problem with that, Your Honor.  
10 My objection is that I had to somehow disclose what my client  
11 was going to say first. I don't have a problem with them  
12 making a motion and saying in a sworn affidavit I know nothing.  
13 Let them take that position. Fine with me. And if they take  
14 that position and they say absolutely, we had no conversation  
15 with the defendant, no knowledge of this case, nothing  
16 whatsoever, then I'll reconsider the affidavit -- I want to see  
17 that in an affidavit, Your Honor.

18 THE COURT: All right. Then we'll do it, then you  
19 both -- then I won't -- I was trying to make it easier for you.  
20 Then any factual representations of the client should be made  
21 formally in an accompanying affidavit.

22 So we'll go the formal route, don't even do it by  
23 letter. I was trying to make it easier. Do it by notice of  
24 motion. Okay?

25 MS. KIRILA: Yes, Your Honor.

1 in the other case to get together and see if they could resolve  
2 this, but if not, it looks like it will be a very interesting  
3 case. Thank you all.

4 MR. WEBER: Thank you, Your Honor.

5 MS. KIRILA: Thank you, Your Honor.

6 (Proceedings concluded)

7 \*\*\*\*\*

8 CERTIFICATION

9 I certify that the foregoing is a correct transcript  
10 from the electronic sound recording of the proceedings in the  
11 above-entitled matter to the best of my knowledge and ability.

12

13

14

*Kathleen M. Price*

May 1, 2008

15

Kathleen Price AAERT Cert. No. 325  
Certified Court Transcriptionist  
Rand Reporting & Transcription, LLC

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**DECLARATION OF  
A. MICHAEL WEBER**

**EXHIBIT 5**

**Pappas, Michael P.**

---

**From:** Kirila, Jill S. [JKirila@ssd.com]  
**Sent:** Tuesday, February 19, 2008 10:21 AM  
**To:** Pappas, Michael P.  
**Cc:** Weber, Michael; Zancourides, Lori Maiorca; Skulnik, Steven  
**Subject:** RE: Paramount Parks v. Nail

*Counsel,*

*Please be advised that we object to your attempts to depose Mr. Kinzel and Mr. Crage in the litigation matter. Neither Mr. Kinzel or Mr. Crage have direct knowledge that would be relevant to this matter, and, certainly, even if they had some tangential knowledge of the dispute with Mr. Nail, there are lower-ranking executives or employees with access to the same information. Accordingly, we view your attempts to depose Mr. Kinzel and Mr. Crage as harassment, burdensome, and unnecessarily duplicative and will not produce either executive for depositions as noticed. Please let me know as soon as possible if you intend to pursue their depositions, and I will proceed with seeking court protection.*

*Further, seeing as neither Mr. Nail nor Mr. Freeman reside in New York, I would suggest that we attempt to coordinate their depositions so that they can be completed in one trip. I am not available on March 14. I would be happy to discuss available dates with you at your convenience.*

*Thank you,*

*Jill*

---

**From:** Pappas, Michael P. [mailto:MPappas@littler.com]  
**Sent:** Monday, February 11, 2008 3:21 PM  
**To:** Kirila, Jill S.  
**Cc:** Weber, Michael  
**Subject:** Paramount Parks v. Nail

Dear Ms. Kirila:

Per our discussion earlier this afternoon, attached are deposition notices.

Very truly yours,

Michael P. Pappas

<<Document.pdf>>

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To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this document (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

This email may contain confidential and privileged material for the sole use of the

5/8/2008

**Pappas, Michael P.**

---

**From:** Kirila, Jill S. [JKirila@ssd.com]  
**Sent:** Monday, March 10, 2008 3:53 PM  
**To:** Weber, Michael; Pappas, Michael P.  
**Cc:** Zancourides, Lori Maiorca  
**Subject:** PPI v. Nail  
**Attachments:** COLUMBUS-#617760-v1-Affidavits.PDF

Counsel:

As we discussed at the Court Conference, attached are affidavits from Mr. Kinzel and Mr. Crage evidencing that neither of them have any direct or unique knowledge relevant to this case. Accordingly, I trust that you will withdraw your deposition notices. Please let me know as soon as possible if we will need to seek court protection. Also, please advise if you need an alternative date for Mr. Freeman's deposition. As I indicated earlier, it may make sense to coordinate with Mr. Nail's deposition, which is currently scheduled for March 28th.

Thanks,

Jill

Jill S. Kirila  
Squire, Sanders & Dempsey L.L.P.

41 South High Street  
Columbus, Ohio 43215  
614.365.2772  
614.365.2499 fax

221 E. Fourth St., Suite 2900  
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5/5/2008

**Pappas, Michael P.**

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**From:** Zancourides, Lori Maiorca [LZancourides@ssd.com]  
**Sent:** Friday, March 28, 2008 4:55 PM  
**To:** Weber, Michael  
**Cc:** Pappas, Michael P.; Kirila, Jill S.; Skulnik, Steven  
**Subject:** RE: Nail Deposition

Mr. Nail's deposition will start at 9 a.m. per the notice we sent you yesterday. We do not expect Mr. Nail's deposition to be lengthy and, as such, are confident that there will be plenty of time for your deposition of Mr. Freeman after Mr. Nail's deposition concludes. We've been more than accommodating in rescheduling Mr. Nail's deposition considering you just told us last week that the March 28th date for Mr. Nail's deposition "no longer works" for you (despite the fact that it was noticed back on February 11th). It was not until yesterday that you re-raised the issue of deposing Mr. Freeman, despite the fact that we offered on more than one occasion to schedule the two depositions together with no response.

As for Mr. Kinzel and Mr. Crage, there is simply no basis for deposing either executive in this case, as their affidavits evidence. We are confident Mr. Freeman's deposition will be consistent with those affidavits, but, in the unlikely event something changes, we can discuss it at that time.

We will look to receive your client's initial disclosures by Monday, March 31st. Please let me know when we can expect to receive responses to both sets of discovery we have sent you (responses to the first set are past due and responses to the second set are due today).

---

**From:** Weber, Michael [mailto:MWeber@littler.com]  
**Sent:** Thursday, March 27, 2008 5:00 PM  
**To:** Zancourides, Lori Maiorca  
**Cc:** Pappas, Michael P.; Kirila, Jill S.; Skulnik, Steven  
**Subject:** RE: Nail Deposition

I want to do Mr. Freeman's deposition before Mr. Nail's. We are reserving our right to depose the other representatives of Plaintiff that we noticed and will make the determination of deposing them after we depose Mr. Freeman.

I expect that initial disclosures will go out Monday.

---

**From:** Zancourides, Lori Maiorca [mailto:LZancourides@ssd.com]  
**Sent:** Thursday, March 27, 2008 4:56 PM  
**To:** Weber, Michael  
**Cc:** Pappas, Michael P.; Kirila, Jill S.; Skulnik, Steven  
**Subject:** RE: Nail Deposition

Thanks. Attached is a revised Notice of Deposition for Mr. Nail reflecting the April 25th date. The 23rd does not work, but we can do Mr. Freeman's deposition after Mr. Nail's on the 25th.

On a related note, please let me know when we can expect to receive your client's initial disclosures and responses to PPI's discovery requests.

5/5/2008

**DECLARATION OF  
A. MICHAEL WEBER**

**EXHIBIT 6**

STATE OF OHIO

:

: ss.

COUNTY OF ERIE

:

**AFFIDAVIT OF RICHARD L. KINZEL**

I, Richard L. Kinzel, having been duly sworn and cautioned, state as follows:

1. On June 30, 2006, Cedar Fair, L.P. ("Cedar Fair") acquired Paramount Parks Inc. ("PPI") through a stock acquisition. At that time I was, and am still the President and Chief Executive Officer of Cedar Fair; after the transaction I have also served as the President and Chief Executive Officer of PPI. My office is located in Sandusky, Ohio.

2. I am aware that, prior to the transaction, Lester Nail was employed by PPI pursuant to the terms of his Employment Agreement to serve as the Company's Senior Vice President / General Counsel. In connection with the transaction, Mr. Nail (along with other PPI executives) were terminated without cause under the terms of their respective employment agreements. This information is certainly not unique to me.

3. I had no direct conversations with Mr. Nail regarding his employment with PPI, the terms of his Employment Agreement, or the termination of his employment.

4. I have not had any communications with Mr. Nail since PPI triggered the termination without cause provision of his Employment Agreement.

5. Through information that has been provided to me from time to time, I am generally aware that PPI continued to pay Mr. Nail compensation and benefits under the terms of his Employment Agreement for some time after his employment with PPI ended; however, I have no direct or unique knowledge involving the details of any such payments.

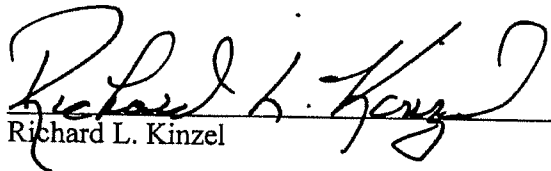


6. I have no direct knowledge of Mr. Nail's employment with Denny's or the circumstances surrounding PPI's discovery of such employment.

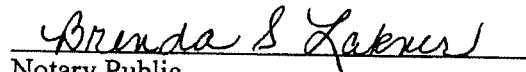
7. Any relevant knowledge I may have about Mr. Nail is indirect and could be acquired through lower-ranking officers, employees, or agents of PPI.

8 As the President and Chief Executive Officer of Cedar Fair and PPI, it would be unduly burdensome to be deposed in the litigation matter between PPI and Mr. Nail, in New York or otherwise, particularly given my lack of firsthand or unique knowledge of the matters in that case.

Further affiant sayeth naught.

  
Richard L. Kinzel

Sworn to before me this 6<sup>th</sup> day of March, 2008.

  
Notary Public  
My Commission Expires: 9-22-12

[SEAL]

**Brenda S. Lakner**  
Notary Public, State of Ohio  
My Commission Expires on September 22, 2012

**DECLARATION OF  
A. MICHAEL WEBER**

**EXHIBIT 7**

**Pappas, Michael P.**

---

**From:** Weber, Michael  
**Sent:** Friday, March 28, 2008 5:00 PM  
**To:** Zancourides, Lori Maiorca  
**Cc:** Pappas, Michael P.; Kirila, Jill S.; Skulnik, Steven  
**Subject:** RE: Nail Deposition

We noticed plaintiff's depositions first and we expect to take them before Mr. Nail's. As a courtesy to you, we will consider not deposing Mr. Kinzel and Mr. Crage but we will make that final decision after we depose Mr. Freeman, which will occur before Mr. Nail's. Please give me some dates for Mr. Freeman's deposition if he can't make it on the 23rd.

---

**From:** Zancourides, Lori Maiorca [mailto:LZancourides@ssd.com]  
**Sent:** Friday, March 28, 2008 4:55 PM  
**To:** Weber, Michael  
**Cc:** Pappas, Michael P.; Kirila, Jill S.; Skulnik, Steven  
**Subject:** RE: Nail Deposition

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**From:** Weber, Michael [mailto:MWeber@littler.com]  
**Sent:** Thursday, March 27, 2008 5:00 PM  
**To:** Zancourides, Lori Maiorca  
**Cc:** Pappas, Michael P.; Kirila, Jill S.; Skulnik, Steven  
**Subject:** RE: Nail Deposition

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I expect that initial disclosures will go out Monday.

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**From:** Zancourides, Lori Maiorca [mailto:LZancourides@ssd.com]  
**Sent:** Thursday, March 27, 2008 4:56 PM  
**To:** Weber, Michael

5/5/2008

**DECLARATION OF  
A. MICHAEL WEBER**

**EXHIBIT 8**

**LITTLER MENDELSON<sup>®</sup>**

ATTORNEYS AT LAW

April 24, 2008

A. Michael Weber  
mweber@littler.com

**VIA FAX & REGULAR MAIL**

Jill S. Kirila, Esq.  
Squire, Sanders & Dempsey, LLP  
1300 Huntington Center  
41 South High Street  
Columbus, Ohio 43215

Re: **Paramount Parks, Inc. v. Nail**  
**07-CV-10595 (SDS) (MHD)**

Dear Ms. Kirila:

We write in a final attempt to resolve without court intervention the parties' dispute concerning the deposition of Richard Kinzel. As you know, although we believe we have the clear right to depose Mr. Kinzel under the Federal Rules and supporting legal authorities, we agreed in good faith to first depose a lower-level official, Craig Freeman, before determining whether to pursue Mr. Kinzel's deposition over Plaintiff's objection. Based on Mr. Freeman's testimony yesterday (which you observed), it is clear that Mr. Kinzel was intimately and personally involved in virtually all of the events at issue in this lawsuit, that he either made or approved all of the relevant decisions concerning Mr. Nail, and that he has first-hand personal knowledge of important facts. Additionally, given Mr. Freeman's poor memory of most of his relevant dealings with Mr. Kinzel, Plaintiff cannot contend that the same information was available through Mr. Freeman's testimony.

Under the circumstances, and given that you have refused to stipulate that Plaintiff would not call Mr. Kinzel as a trial witness, Plaintiff cannot in good faith maintain its objection to producing Mr. Kinzel for deposition. Therefore, we ask that Plaintiff withdraw its objection and produce Mr. Kinzel for deposition as soon as possible. Please advise us of your position on this matter no later than Wednesday, April 30, 2008. If Plaintiff continues to refuse to produce Mr. Kinzel for deposition, we will promptly seek court intervention, including a motion to compel Mr. Kinzel's deposition, a request for sanctions based on Plaintiff's taking what we view as a wholly frivolous legal position, and a request for sanctions against Mr. Kinzel personally for submitting an affidavit stating that he has no personal knowledge about this case.

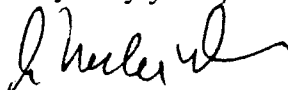
Jill S. Kirila, Esq.  
April 24, 2008  
Page 2

Indeed, based on your client's testimony yesterday, it is clearer than ever that Plaintiff's entire lawsuit against Mr. Nail is frivolous and without legal or factual foundation. Among other things, Mr. Freeman testified unequivocally that: (i) Mr. Nail never failed or refused to provide services to PPI after his termination; (ii) PPI never asked Mr. Nail to provide services after his termination; (iii) no circumstances arose under which PPI would have even considered availing itself of Mr. Nail's services after his termination; (iv) PPI had no intention of ever invoking the exclusive services provision of Mr. Nail's employment agreement after his termination; (v) Cedar Fair did not contact Mr. Nail in connection with its new General Counsel position that had been under consideration since mid-2007, even though it purportedly believed Mr. Nail was still unemployed at the time; (vi) PPI had no business interest recognizable under New York law for prohibiting Mr. Nail from working at Denny's; (vii) there was nothing inherently inconsistent with Mr. Nail performing services for PPI while being employed at Denny's; and (viii) if Mr. Nail was willing to leave his Denny's employment upon being asked to perform services for PPI, it would not have violated his employment agreement.

Based on these facts, PPI cannot possibly seek to now invoke the "ready, willing, and able" clause to deprive Mr. Nail of the compensation that PPI was contractually obligated to pay him after terminating his employment for a definite term without cause. Indeed, we believe that if Plaintiff continues to pursue these claims in the face of this evidence, it would constitute sanctionable bad faith under Rule 11. Accordingly, we request that Plaintiff immediately agree to dismiss all claims against Mr. Nail with prejudice. In return, Mr. Nail will agree to dismiss his counterclaims with prejudice, will not seek to depose Mr. Kinzel, and will not seek sanctions. At an absolute minimum, Plaintiff should dismiss its fraud cause of action against Mr. Nail since the evidence categorically demonstrates that Mr. Nail had no intention to defraud Plaintiff, had no legal obligation to inform Plaintiff of his new employment, and made no material misrepresentations. The only fraud that was committed in this case was the fraud Plaintiff perpetrated upon its benefits providers by knowingly and falsely representing that Mr. Nail and others were active employees even after PPI had terminated their employment without cause and they were no longer performing services.

Again, please advise us of Plaintiff's position on these issues no later than Wednesday, April 30, 2008, so that we may act accordingly.

Very truly yours,



A. Michael Weber

AMW/ej